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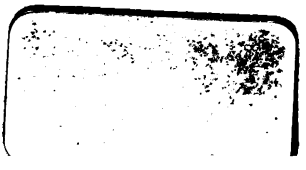

# DEBATES

IN THE

SENATE OF THE UNITED STATES

ON THE

# JUDICIARY,

DURING THE FIRST SESSION OF THE SEVENTH CONGRESS;

*ALSO,*

THE SEVERAL MOTIONS, RESOLUTIONS, AND VOTES,
TAKEN UPON THAT

MOMENTOUS SUBJECT;

*AND*

A COMPLETE LIST OF THE YEAS AND NAYS,
*AS ENTERED ON THE JOURNALS.*

ENTERED ACCORDING TO LAW.

PHILADELPHIA:

FOR E. BRONSON, PRINTED BY THOS. SMITH.

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# DEBATE ON THE JUDICIARY BILL.

THE great queſtion on the independence of the judicial department of our government having been decided in Congreſs, it was thought expedient to collect and publiſh the intereſting debate which took place on that ſubject in the Senate of the United States. It is here preſented to the public correctly. Great part of it has indeed appeared already in the National Intelligencer, but the party-attachments of the editor of that paper, are too ſtrong, and his party-connections too influential, to permit him always to ſpeak the whole truth. In ſome inſtances, (perhaps from miſapprehenſion) the arguments of his friends have been ſo corrected, as to elude, in ſome meaſure, the anſwers which were given. Where they have been merely embelliſhed, it is not thought neceſſary to alter them from the ſtate in which he diſplayed them. An intelligent friend, who was preſent, and who has compared the different publications with his own notes, has furniſhed the materials for this pamphlet, the editor of which does not preſume to offer an opinion, much

leſs an argument, of his own. He publiſhes it with the view to profeſſional emolument, and in the hope of being uſeful to his country.

Every independent American will doubtleſs wiſh to poſſeſs the means of deciding for himſelf on this important ſubject. Many years may paſs away before the queſtions which have now been ſtirred ſhall be finally ſettled. During their progreſs, it may not, perhaps, be uſeleſs to the citizens of this extenſive country, to bring the aſſertions of prominent characters to the touch-ſtone of experience; and the following pages will afford the means as to thoſe who have ſeats in the Senate. We cannot promiſe, but we are not without the hope of being able to offer, at a future day, the debates on the ſame ſubject in the Houſe of Repreſentatives.

On the 4th day of January, 1802, Mr. BRECKENRIDGE gave notice, that he would, on the 6th, move for the order of the day, on that part of the Preſident's meſſage* which reſpects the judiciary ſyſtem, and informed the houſe he ſhould propoſe a

* The part alluded to is as follows: "the judiciary system of the United States, and especially that portion of it recently erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the inſtitution bears to the business it has to perform, I have caused to be procured from the several states, and now lay before Congress, an exact statement of all the causes decided since the firſt establishment of the courts, and of those which were depending when additional courts and judges were brought in to their aid."

repeal of the law paſſed on that ſubject the laſt ſeſſion, and of certain ſections in a preceding law. On the 6th he made the following motion:

"Reſolved, That the act of Congreſs, paſſed on the 13th day of February, 1801, entitled *An Act to provide for the more convenient organization of the courts of the United States, ought to be repealed.*"

He ſaid, he ſhould, for the preſent, wave the remainder of what he had intended to move. The conſideration of his motion was poſtponed to the eighth.

On Friday the 8th of January, he opened the debate as follows:

It will be expected of me, I preſume, ſir, as I introduced the reſolution now under conſideration, to aſſign my reaſons for wiſhing a repeal of this law. This I ſhall do; and ſhall endeavour to ſhew,

I. That the law is unneceſſary and improper, and was ſo at its paſſage; and

II. That the courts and judges created by it, can and ought to be aboliſhed.

1ſt. That the act under conſideration, was unneceſſary and improper, is to my mind, no difficult taſk to prove. No increaſe of courts or judges could be neceſſary or juſtifiable, unleſs the exiſting courts and judges were incompetent to the prompt and proper diſcharge of the duties conſigned to them. To hold out a ſhew of litigation, when in fact little exiſts, muſt be impolitic; and to multiply expenſive ſyſtems, and create hoſts of expenſive of-

ficers, without having experienced an actual neceſſity for them, muſt be a wanton waſte of the public treaſure.

The document before us ſhews, that at the paſſage of this act, the exiſting courts, not only from their number, but from the ſuits depending before them, were fully competent to a ſpeedy deciſion of thoſe ſuits—It ſhews, that on the 15th day of June laſt, there were depending in all the Circuit Courts, (that of Maryland only excepted, whoſe docket we have not been furniſhed with,) 1539 ſuits. It ſhews that 8276 ſuits of every deſcription have come before thoſe courts, in 10 years and upwards. From this it appears, that the annual average amount of ſuits has been about 800.

But ſundry contingent things have conſpired to ſwell the circuit court dockets. In Maryland, Virginia, and in all the ſouthern and ſouth-weſtern ſtates, a great number of ſuits have been brought by Britiſh creditors: this ſpecies of controverſy is nearly at an end.

In Pennſylvania, the docket has been ſwelled by proſecutions in conſequence of the weſtern inſurrection, by the diſturbances in Bucks, and Northampton Counties; and by the Sedition Act. Theſe I find amount in this State to 240 ſuits.

In Kentucky, non-reſident land claimants have gone into the Federal Court from a temporary convenience; becauſe, until within a year or two paſt, there exiſted no court of general juriſdiction co-ex-

tenſive with the whole State. I find too, that of the ſix hundred and odd ſuits which have been commenced there, 196 of them have been proſecutions under the laws of the United States.

In moſt of the States there have been proſecutions under the Sedition Act. This ſource of litigation is, I truſt, for ever dried up.—And, laſtly, in *all* the States a number of ſuits have ariſen under the Exciſe Law; which ſource of controverſy, will, I hope, before this ſeſſion terminates, be alſo dried up.

But this ſame document diſcloſes another important fact; which is, that nevertheleſs all theſe untoward and temporary ſources of federal adjudication, the ſuits in thoſe courts are *decreaſing;* for from the dockets exhibited (except Kentucky, and Tenneſſee, whoſe ſuits are ſummed up in the aggregate) it appears, that in 1799, there were 1274; and in 1800 there were 687 ſuits commenced; ſhewing a decreaſe of 587 ſuits.

Could it be neceſſary then to *increaſe* courts when ſuits were *decreaſing?* Could it be neceſſary to multiply judges, when their duties were diminiſhing? And will I not be juſtified, therefore, in affirming, that the law was unneceſſary, and that Congreſs acted under a miſtaken impreſſion, when they multiplied courts and judges at a time when litigation was actually decreaſing.

But, ſir, the decreaſe of buſineſs goes a ſmall way in fixing my opinion on this ſubject. I am in-

clined to think, that ſo far from there having been a neceſſity at this time for an increaſe of courts and judges; that the time never will arrive, when America will ſtand in need of 38 federal judges. Look ſir, at your conſtitution, and ſee the judicial power there conſigned to federal courts, and ſeriouſly aſk yourſelf, can there be fairly extracted from thoſe powers ſubjects of litigation ſufficient for 6 ſupreme and 32 inferior court judges?—To me it appears impoſſible.

The judicial powers given to the federal courts were never intended by the conſtitution to embrace, excluſively, ſubjects of litigation, which could with propriety be left with the State courts. Their juriſdiction was intended principally to extend to great national and foreign concerns. Except caſes ariſing under the laws of the United States, I do not at preſent recollect but three or four kinds in which their power extends to ſubjects of litigation, in which private perſons only are concerned. And can it be poſſible, that with a juriſdiction embracing ſo ſmall a portion of private litigation, in great part of which the State courts might, and ought, to participate, that we can ſtand in need of 38 judges; and expend in judiciary regulations the annual ſum of 137,200 dollars?

No other country, whoſe regulations I have any knowledge of, furniſhes an example of a ſyſtem ſo prodigal and extenſive. In England, whoſe courts are the boaſt, and ſaid to be the ſecurity of

the rights of the nation, every man knows, there are but 12 judges and 3 principal courts. Theſe courts embrace, in their original or appellate juriſdiction, almoſt the whole circle of human concerns.

The king's bench and common pleas, which conſiſt of 4 judges each, entertain all the common law ſuits of 40s. and upwards, originating among 9 millions of the moſt commercial people in the world. They moreover reviſe the proceedings of not only all the petty courts of record in the kingdom, even down to the courts of piepondre; but alſo of the court of the king's bench in Ireland: and theſe ſupreme courts, after centuries of experiment, are found to be fully competent to *all* the buſineſs of the kingdom.

I will now inquire into the power of Congreſs, to put down theſe additional courts and judges.

1ſt. As to the courts.—Congreſs are empowered by the conſtitution "from time to time, to ordain and eſtabliſh inferior courts." The act now under conſideration, is a legiſlative *conſtruction* of this clauſe in the conſtitution, that Congreſs may *aboliſh* as well as create theſe *judicial officers;* becauſe, it does expreſsly in the 27th ſection of the act, *aboliſh* the then exiſting inferior courts, for the purpoſe of making way for the preſent. This conſtruction I contend is correct; but it is equally pertinent to my object, whether it be, or be not. If it be correct, then the preſent inferior courts may be aboliſhed as conſtitutionally as the laſt; if it be

not, then the law for abolishing the former courts, and establishing the present, was unconstitutional and consequently repealable.

But, independent of this legislative construction, on which I do not found my opinion, nor mean to rely my argument, there is little doubt indeed, in my mind, as to the power of Congress on this law. The first section of the 3d art. vests the judicial power of the United States in one supreme court and *such* inferior courts as Congress *may* from *time to time*, ordain and establish. By this clause Congress *may*, from time to time, establish inferior courts; but it is clearly a discretional power, and they *may not* establish them. The language of the constitution is very different when regulations are not left discretional. For example:—"The trial, says the constitution, of all crimes, (except in cases of impeachment) *shall* be by jury: representatives and direct taxes *shall* be applied according to numbers. All revenue bills *shall* originate in the House of Representatives, &c." It would, therefore, in my view, be a perversion not only of language, but of intellect, to say, that although Congress *may* from time to time establish inferior courts, yet, when established, that they *shall not* be abolished by a subsequent Congress possessing equal powers. It would be a paradox in legislation.

2d. As to the judges.—The judiciary department is so constructed as to be sufficiently secured against the improper influence of either the execu-

tive or legiſlative departments. The courts are organized and eſtabliſhed by the legiſlature, and the executive creates the judges. Being thus organized, the conſtitution affords the proper checks to ſecure their honeſty and independence in office. It declares they ſhall not be removed from *office* during good behaviour; nor their ſalaries diminiſhed *during their continuance in office*. From this it reſults, that a judge, after his appointment, is *totally* out of the power of the Preſident, and his ſalary ſecured againſt legiſlative diminution, *during his continuance in office*. The firſt of theſe checks, which protects a judge in his office during good behaviour, applies to the *President only*, who would otherwiſe have poſſeſſed the power of removing him, like all other officers, *at pleaſure*; and the other check, forbidding a diminution of their ſalaries, applies to the *legiſlature only*. They are two ſeparate and diſtinct checks, furniſhed by the conſtitution againſt two diſtinct departments of the government; and they are the *only* ones which are or ought to have been furniſhed on the ſubject.

But, becauſe the conſtitution declares that a judge ſhall hold his *office* during *good behaviour*, can it be tortured to mean that he ſhall hold his office after it is aboliſhed? Can it mean that his tenure ſhould be limited by behaving well in an office, which did not exiſt? Can it mean that an office may exiſt although its duties are extinct? Can it mean, in ſhort, that the ſhadow, to wit, the judge

can remain, when the ſubſtance, to wit, the office, is removed? It muſt have intended all theſe abſurdities, or it muſt admit a conſtruction which will avoid them.

That conſtruction obviouſly is, that a judge ſhould hold an *exiſting office*, ſo long as he did his duty in that office; and not that he ſhould hold an office that did not exiſt, and perform duties not provided by law. Had the conſtruction which I contend againſt, been contemplated by thoſe who framed the conſtitution, it would have been neceſſary to have declared, explicitly, that judges ſhould hold their offices *and ſalaries* during good behaviour.

Such a conſtruction is not only irreconcileable with reaſon and propriety, but is repugnant to the principles of the conſtitution. It is a principle of our conſtitution, as well as of common honeſty, that no man ſhall receive public money, but in conſideration of public ſervices. Sinecure offices, therefore, are not permitted by our laws or conſtitution. By this conſtruction, complete ſinecure offices will be created; hoſts of conſtitutional penſioners will be ſettled on us, and we cannot calculate how long. This is really creating a new ſpecies of public debt, not like any other of our debts, we cannot diſcharge the principal at any fixed time. It is worſe than the deferred ſtock; for on that you pay an annual intereſt only, and the principal is redeemable at a given period. But here you pay an *annual principal*, and that principal irredeemable except by the

will of Providence. It may ſuit countries where public debts are conſidered as public bleſſings; for in this way a people might ſoon become ſuperlatively bleſſed indeed.

Let me not be told, ſir, that the ſalaries in the preſent caſe, are inconſiderable, and ought not to be withheld; and, that the doctrine is not a dangerous one. I anſwer, it is the principle I contend againſt; and if it is heterodox, for one dollar, it is equally ſo for a million.—But, I contend, the principle, if once admitted, may be extended to deſtructive lengths. Suppoſe it ſhould hereafter happen, that thoſe in power ſhould combine to provide handſomely for their friends, could any way ſo plain, eaſy, and effectual, preſent itſelf, as by creating courts, and filling them with thoſe friends? Might not ſixty, as well as ſixteen, with ſalaries of twenty thouſand, inſtead of two thouſand dollars, be provided for in this way?

The thing, I truſt, will not happen. It is preſuming a high degree of corruption; but it might happen under the conſtruction contended for; as the conſtitution preſumes corruption may happen in *any* department of the government, by the checks it has furniſhed againſt it, and as this conſtruction does open a wide door for corruption, it is but fair reaſoning, to ſhew the dangers which may grow out of it; for in the conſtruction of all inſtruments, that which will lead to inconvenience, miſchief, or abſurdity, ought to be avoided. This doctrine has another difficulty to reconcile:—after the law is repeal-

ed, they are either judges or they are not. If they are judges, they can be impeached; but for what? For *mal-feaſance in office* only. How, I would aſk, can they be impeached for mal-feaſance *in office*, when their offices are aboliſhed? They are not officers, but ſtill they are entitled to the emoluments annexed to an office. Although they are judges, they cannot be guilty of mal-feaſance, becauſe they have no office. They are only *quaſi* judges, ſo far as regards the *duties*, but *real* judges, ſo far as regards the *ſalary*. It muſt be the *ſalary*, then, and not the *duties*, which conſtitute a judge. For my part, I do not know under what claſs of things to range them, or what name to give them. They are unacknowledged by the letter, ſpirit, or genius of our conſtitution, and are, to me, non-deſcripts.

There is another difficulty, under this conſtruction, ſtill to encounter, and which alſo grows out of the conſtitution. By the conſtitution, a new ſtate may be formed by the junction of two or more ſtates, with their aſſent, and that of Congreſs. If this doctrine, once a judge and always a judge, be correct, what would you do, in ſuch an event, with the diſtrict judges of the ſtates who formed that junction? Both would be unneceſſary, and you would have in a ſingle ſtate, two judges of equal and concurrent juriſdiction; or one a real judge, with an office, and another a quaſi judge, without an office. The ſtates alſo, forming ſuch junction, would be equally embarraſſed with their ſtate judges; for

the ſame conſtruction would be equally applicable to them.

Upon this conſtruction, alſo, an infallibility is predicated, which it would be arrogance in any human inſtitution to aſſume, and which goes to cut up legiſlation by the roots. We ſhould be debarred from that, which is indulged to us from a higher ſource, and on ſubjects of higher concern than legiſlation, I mean a retraction from, and correction of our errors. On all other ſubjects of legiſlation, we are allowed, it ſeems, to change our minds, except on judicial ſubjects, which, of all others, is the moſt complex and difficult. I appeal to our own ſtatute book to prove this difficulty; for, in ten years, Congreſs have paſſed no leſs than twenty-ſix laws on this ſubject.

I conceive, ſir, that the tenure by which a judge holds his office, is evidently bottomed on the idea of ſecuring his honeſty and independence, whilſt exerciſing his office. The idea was introduced in England, to counteract the influence of the crown over the judges; but if the conſtruction now contended for, ſhall prevail, we ſhall in one miſtaken imitation of this our favourite prototype, out-ſtrip them, by eſtabliſhing, what they have not, a judici-oligarchy; for there their judges are removeable by a joint vote of Lords and Commons. Here ours are not removable, except for mal-feaſance, in office; which mal-feaſance could not be committed, as they would have no office.

Upon the whole, ſir, as all courts under any free government muſt be created with an eye to the adminiſtration of juſtice only; and not with any regard to the advancement or emolument of individual men; as we have undeniable evidence before us, that the creation of the courts now under conſideration was totally unneceſſary; and as no government can, I apprehend, ſeriouſly deny, that this legiſlature has a right to repeal a law enacted by a preceding one; we will, in any event, diſcharge our duty by repealing this law; and thereby doing all in our power to correct the evil. If the judges are entitled to their ſalaries, under the conſtitution, our repeal will not affect them; and they will, no doubt, reſort to their proper remedy: For where there is a conſtitutional right, there muſt be a remedy.

After Mr. BRECKENRIDGE ſat down, there was a conſiderable pauſe, and as no perſon ſeemed inclined to ſpeak, the preſident pro tempore, Mr. BALDWIN, of Georgia, aſked, if the houſe was ready for the queſtion: Mr. OLCOTT of New-Hampſhire, thereupon roſe and obſerved, that the ſubject was of ſo much importance as to merit further conſideration. The arguments of the gentleman from Kentucky, however ingenious, had not convinced him that the law ought to be repealed. It had not riſen like a muſhroom in the night, but the principles on which it reſted had been ſettled after mature reflection. He thought it would be extraordinary, before any inconvenience had been diſcovered, to ſet ſuch a law aſide. For theſe rea-

ſons Mr. OLCOTT moved the poſtponement of the conſideration of the queſtion.

Mr. COCKE, of Tenneſſee. This act is ſaid to be entirely experimental, and it is further ſaid, that no inconveniencies had ariſen under it. He thought ſerious inconveniencies had ariſen. The inconvenience of paying 137,000 dollars a year was truly ſerious; and it was an inconvenience which ought to be got rid of as ſoon as poſſible. It was expected that gentlemen oppoſed to the reſolution would come forward with their arguments againſt it. If, however, they had no arguments to uſe, he thought his friend from Kentucky had brought forward reaſons ſo cogent and experimental, that the houſe muſt be convinced of the propriety of the repeal.

Mr. DAYTON, of New-Jerſey, truſted it was not the diſpoſition of the mover to preſs a deciſion to-day. He thought it would be improper to poſtpone the diſcuſſion, as gentlemen would thereby be precluded from offering their opinions on the ſubject. He hoped the motion for poſtponement would be withdrawn, that other gentlemen might have an opportunity to ſpeak.

Motion withdrawn.

Mr. JONA. MASON, of Maſſachuſetts, ſaid, it would be agreed on all hands that this was one of the moſt important queſtions that ever came before a legiſlature. Were he not of this opinion he would not have riſen to offer his ſentiments. But he felt

ſo deep an intereſt in the queſtion, and from the reſpect which he entertained for the diſtrict of country he repreſented, he deemed it his duty to meet the ſubject, and not be ſatisfied with giving to it, his ſilent negative.

It was well known, and he preſumed it would be readily agreed to, that no people on earth, for the laſt twenty-four years, had been ſo much in the habit of forming ſyſtems of government, as the people of the United States. Nor had any people been ſo fortunately ſituated for cool and correct deliberation. In the conſtitutions they had formed, it would appear that there had been an uniform concurrence in the eſtabliſhment of one great prominent feature, and alſo in the application of one uniform principle to that feature. That the legiſlative, the executive, and the judicial, ſhould form the three great departments of government, and that they ſhould be diſtinct from, and independent of each other. And the more the proceedings and ſentiments of the people were examined, the more clearly would it appear that all the new and additional checks created, had been applied to adjuſt the relative weakneſs or ſtrength of the ſeveral departments of government. The ſame principle had been obſerved in the old world, whenever an opportunity preſented for forming a conſtitution, having for its object, the protection of individual rights. It accorded too, with the uniform opinions of the moſt celebrated hiſtorians and politicians both of Europe.

and America; with the opinions and practices of all our legiſlatures. Nor had Mr. MASON ever heard any one hardy enough to deny the propriety of its obſervance.

He well recollected, that among the great grievances, which had rouſed us into an aſſertion of our independence of England, it was declared in the inſtrument aſſerting that independence, "that the crown had the appointment of judges dependent on its will and favor."

From all theſe circumſtances he concluded, that the people of America, when they formed a ſyſtem for their federal government, intended to eſtabliſh this great principle; and the concluſion would be confirmed by an examination of the conſtitution, which, in every ſection, recognized or referred to it.

The conſtitution, in the conſtruction of the executive, legiſlative, and judiciary departments, had aſſigned to each a different tenure. The Preſident was choſen for four years; the Senate for ſix years, ſubject to a preſcribed rotation, biennially; the Houſe of Repreſentatives for two years; and the Judiciary during good behaviour. It ſays to the Preſident, at the expiration of every four years, you ſhall revert to the character of a private citizen, however ſplendid your talents, or conſpicuous your virtue. Why? Becauſe, you have aſſigned to you, powers which it is dangerous to exerciſe. You have the power of creating offices and officers. You have prerogatives. The temptation to an abuſe

of your power is great. Such has been the uniform experience of ages. The conſtitution holds the ſame language to the Senate and Houſe of Repreſentatives :—It ſays, it is neceſſary for the good of ſociety that you alſo, ſhould revert, at ſhort periods, to the maſs of the people, becauſe, to you are conſigned the moſt important duties of government, and becauſe you hold the purſe-ſtrings of the nation.

To the Judiciary : What is the language applied to them ? The judges are not appointed for two, four, or any given number of years ; but they hold their appointments for life, unleſs they miſbehave themſelves. Why ? For this reaſon. They are not the depoſitaries of the high prerogatives of government. They neither appoint to office, or hold the purſe-ſtrings of the country, or legiſlate for it. They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be diſpoſed to pervert their power to improper purpoſes. What are their duties ? To expound and apply the laws. To do this, with fidelity and ſkill, requires a length of time. The requiſite knowledge is not to be procured in a day. Theſe are the plain and ſtrong reaſons which muſt ſtrike every mind, for the different tenure, by which the judges hold their offices, and they are ſuch as will eternally endure wherever liberty exiſts.

On examination, it will be found that the people, in forming their conſtitution, meant to make the judges as independent of the legiſlature as of the

executive. Becauſe the duties which they have to perform, call upon them to expound, not only the laws, but the conſtitution alſo; in which is involved the power of checking the legiſlature in caſe it ſhould paſs any laws, in violation of the conſtitution. For this reaſon, it was more important, that the judges, in this country, ſhould be placed beyond the control of the legiſlature, than in other countries, where no ſuch power attaches to them.

Mr. MASON challenged gentlemen to exhibit a ſingle inſtance, beſide that lately furniſhed by Maryland, of a legiſlative act, repealing a law paſſed in execution of a conſtitution, under which the judges held their offices during good behaviour. In truth, no ſuch power exiſted, nor was it in the power of any legiſlature, ſo circumſtanced, by a ſingle law, to daſh them out of exiſtence.

The opinion of Mr. MASON, therefore, was, that this legiſlature have no right to repeal the judiciary law. For ſuch an act would be in direct violation of the conſtitution.

The conſtitution ſays:—"The judicial power of the United States ſhall be veſted in one Supreme Court, and in ſuch inferior courts as the Congreſs may, from time to time ordain and eſtabliſh. The judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour, and ſhall, at ſtated times, receive for their ſervices, a compenſation, which ſhall not be diminiſhed during their continuance in office."

Thus, it ſays, " the judges *ſhall hold* their offices during good behaviour." How can this direction of the conſtitution be complied with, if the legiſlature ſhall, from ſeſſion to ſeſſion, repeal the law under which the office is held, and *remove the office?* He did not conceive that any words, which human ingenuity could deviſe, could more completely get over the remarks that had been made by the gentleman from Kentucky. But that gentleman ſays, that this proviſion of the conſtitution applies excluſively to the Preſident. He conſiders it as made to ſuperſede the powers of the Preſident to remove the judges. But could this have been the contemplation of the framers of the conſtitution, when even the right of the Preſident to remove officers at pleaſure, was a matter of great doubt, and had divided in opinion our moſt enlightened citizens. Not that he ſtated this circumſtance, becauſe he had doubts? He thought the Preſident ought to have the right; but it did not emanate from the conſtitution; was not expreſsly found in the conſtitution; but ſprang from legiſlative conſtruction.

Beſides, if Congreſs have the right to repeal the whole of the law, they muſt poſſes, the right to repeal a ſection of it. If ſo, they may repeal the law, ſo far as it applies to a particular diſtrict, and thus get rid of an obnoxious judge. They may remove his office from him. Would it not be abſurd ſtill to ſay, that the removed judge held his office during good behaviour?

The conſtitution ſays, "The judges, ſhall, at ſtated times, receive for their ſervices, a compenſation, which ſhall not be diminiſhed during their continuance in office." Why this proviſion? Why guard againſt the power to deprive the judges of their pay in a diminution of it, and not provide againſt what was more important, their exiſtence?

Mr. MASON knew that a legiſlative body was occaſionally ſubject to the dominance of violent paſſions; he knew, that they might paſs unconſtitutional laws; and that the judges, ſworn to ſupport the conſtitution, would refuſe to carry them into effect; and he knew that the legiſlature might contend for the execution of their ſtatutes. Hence, the neceſſity of placing the judges above the influence of theſe paſſions; and for theſe reaſons the conſtitution had put them out of the power of the legiſlature.

Still, if gentlemen would not agree with him as to the unconſtitutionality of the meaſure propoſed, he would aſk, was it expedient? Were there not great doubts exiſting throughout the United States? Ought not each gentleman to ſay, though I may have no doubts nor heſitancy, are not a large portion of our citizens of opinion, that it would violate the conſtitution? If this diverſity of ſentiment exiſts, ought not the evils under the judiciary law to be very great before we touch it? Ought we not to aim at harmoniſing, inſtead of dividing our citizens? Was not the conſtitution a ſacred inſtrument; an inſtrument ever to be approached with

reverence; an inſtrument which ought not lightly to be drawn from its hallowed retreat, and ſubjected to the flux and reflux of paſſion. But where is the evil complained of? This ſyſtem was eſtabliſhed only laſt ſeſſion: ſcarcely had it been yet organiſed; ſcarcely had we tried it on its very threſhold; where then the neceſſity of being ſo pointed, as to deſtroy a ſyſtem, ſcarcely formed three days ago? Does not this manifeſt precipitation? Will it not manifeſt more magnanimity, more rationality, to abide by it until we try it; inſtead of taking up a pen, and daſhing it out of exiſtence?

The reaſon that the ſuits depending were not ſo numerous, aroſe from the nature of the old eſtabliſhment. That eſtabliſhment had no parallel. It carried with it the ſeeds of its own diſſolution. No ſet of judges could be found phyſically hardy enough to execute it. Such was the labour of their duties, that they were denied time for ſtudy or improvement. Beſides, a caſe was heard at one term by one judge, and poſtponed for conſideration to the next term. At that term, another judge appeared, and all the arguments were to be gone over anew; and the ſame thing might happen again and again. Was this the way to extend juſtice to our citizens? Was not the delay equivalent to a denial of juſtice? It was a fact, that three-fourths of the time of the judges had been taken up in travelling.

It may be true, that the number of ſuits in the federal courts is leſſened; and if the internal taxes are to be ſwept away, it may be ſtill more leſſened, as far as depends upon that ſource. But is it poſſible, that ſuits will go on diminiſhing as the gentleman ſeems to think? Is reaſon ſo predominant? Is the millenium ſo near at hand? On the contrary, is not our commerce increaſing with great rapidity? Is not our wealth increaſing? And will not controverſies ariſe, in proportion to the growth of our numbers and property? Controverſies, which will go to federal tribunals, as ſoon as the judiciary ſyſtem is fully eſtabliſhed. By the documents, quoted by the gentleman from Kentucky, it appears, that more buſineſs has been lately done in the federal courts, than in any other antecedent time, except in one or two counties in Pennſylvania.

Beſides, (ſaid Mr. MASON,) even if there be not a great preſſure of buſineſs, had we not better pay the paltry ſum of 30 or 40,000 dollars for a ſyſtem too broad, than have one that is too narrow? Is it not a melancholy conſideration, that in many of the European States, the coſts are equal to the principal contended for? It would be honourable to the United States to exhibit a different example. It would be honourable to them to hold out an example, even if confined to foreigners, of prompt and efficacious juſtice, though at the expence of 100,000 dollars. Such an example would be a cauſe for national triumph, and our people would exult in it.

Inaſmuch, therefore, as to render the judges reſpectable, it was neceſſary to make their appointments permanent, as time, labour, experience, and long ſtudy, were required to perfect any man in a knowledge of the laws of his country: inaſmuch as it has been thought good policy, that the judges ſhould be well paid; and that they ſhould be ſo placed as to be diveſted of all fear, and neither to look to the right nor to the left: inaſmuch as they ſhould be ſo placed as to render them independent of legiſlative as well as of executive power; he hoped this law would not be repealed.

Theſe were the reaſons, which Mr. MASON aſſigned as thoſe which would influence his deciſion. He acknowledged, that he had not entered the Houſe prepared to offer his ſentiments; but as the queſtion was about to be put, he had thought it beſt to offer them, ſuch as they were, rather than to give a ſilent vote on a ſubject of ſuch great importance.

Mr. WRIGHT, of Maryland, ſaid, it muſt be agreed, that this ſubject was one of great importance from its effect upon our revenues. If the repeal of the act of laſt ſeſſion was conſtitutional, he preſumed there could be little doubt of its expediency from the documents on our table. Has the conſtitution veſted the legiſlature with a power over the ſubject of the reſolution? If ſo, then ſhould a law, which had been the effect of a flux of paſſion, be repealed by a reflux of reaſon. He believed that it had been

introduced at the period of an expiring adminiſtration. It had been reſiſted by the republican ſide of the Senate; and he truſted that now, on the return of reaſon, it would be repealed.

An alluſion had been made to the ſtate of Maryland, which had repealed a law reſpecting the judiciary. Mr. WRIGHT here quoted the conſtitution of that ſtate, whoſe proviſions, he obſerved, ſo far as reſpected the tenure of the office of a judge, correſponded with thoſe of the conſtitution of the United States. The Legiſlature of that ſtate had been of opinion, and correctly too, that they did poſſeſs the power of repealing a law formed by their predeceſſors. And the legiſlature of the United States poſſeſſed the ſame power. This they had already determined by the very act of the laſt ſeſſion, which, while it created a number of new judges, aboliſhed the offices of ſeveral diſtrict judges.

It was clear that the conſtitution meant to guard the officer, and not the office. Will it be ſaid that what the legiſlature makes to-day, they cannot annihilate to-morrow. Even as to the judges of the Supreme Court, had not the law firſt conſtituted ſix, and was it not now reduced by law to five? And if Congreſs has power to reduce the number of the ſuperior, have they not the ſame power to reduce the number of the inferior judges? Are we to be eternally bound by the follies of a law, which ought never to have been paſſed?

Why the expreſſion in the conſtitution, "The judicial power ſhall be veſted in ſuch inferior courts as Congreſs may, *from time to time*, ordain and eſtabliſh," if it had been intended, as is now contended, that the office being once beſtowed, no change can be made.

If the caſe of thoſe, who have accepted thoſe offices, be conſidered as a hard one, may it not be ſaid that they knew the conſtitution, and the tenure by which their offices were to be held. In our regard for individual intereſt, we ought not to ſacrifice the great intereſts of our country; and was it not demonſtrable that, if 21 judges were ſufficient when 1200 ſuits exiſted, they were equally ſo, when there were no more than 700.

The gentleman from Maſſachuſetts was wrong in ſtating that Maryland was the only ſtate that had repealed a law creating judiciary offices. Virginia, if he was not miſinformed, had done the ſame thing. But we wanted not theſe precedents. Our own archives furniſhed us with abundant precedents. We had reduced the judges of the Supreme Court from ſix to five, we had annihilated two diſtricts. The very gentlemen oppoſed now to the repeal of this law had voted for theſe meaſures. Thus it appeared, that though the Conſtitution juſtified the meaſure *then*, it prohibited it *now!*

Believing the judiciary law of the laſt ſeſſion had ariſen from a diſpoſition to provide for the warm friends of the exiſting adminiſtration; believing

that great inconveniencies had ariſen under it; believing its expense to be oppreſſive; and believing, that if one legiſlature had a right to paſs it, another legiſlature had the ſame right to repeal it; he truſted, that however a preceding legiſlature might have been governed by paſſion, the preſent legiſlature would, by repealing it, ſhew that they were governed by reaſon.

After Mr. WRIGHT concluded, there was again a pauſe, and the queſtion was called for; Mr. MORRIS, of New-York, then ſpoke, as follows:

Mr. Preſident, I am ſo very unfortunate, that the arguments for repealing the law, to which this motion refers, have confirmed my opinion that it ought not to be repealed. The honourable mover has thought fit to reſt his propoſition upon two grounds:

Firſt.—That the judiciary law, paſſed laſt ſeſſion, is unneceſſary and improper.

Secondly.—That we have, by the conſtitution, a right to repeal it; and, therefore, ought to exerciſe that right.

The numerical mode of argument he has made uſe of, to eſtabliſh his firſt point, is perfectly novel, and, as ſuch, it commands my tribute of admiration. This, indeed, is the firſt time I ever heard that the utility of courts ſhould be eſtimated by the number of ſuits which they are called on to decide. I remember once to have read, that a juſtly

celebrated monarch of England, the great Alfred, had enacted ſuch laws, eſtabliſhed ſuch tribunals, and organized ſuch a ſyſtem of police, that a purſe of gold might be hung upon the ſide of the high-way, without any danger that it would be ſtolen. But, ſir, had the honourable gentleman from Kentucky exiſted in thoſe days, he would, perhaps, have attempted to convince old Alfred, that he had been egregiouſly miſtaken; and, that a circumſtance, which he conſidered as the pride and glory of his reign, had ariſen from its greateſt defect, and foreſt evil. For, by aſſuming the unfrequency of crimes as the proof that tribunals were unneceſſary, and thus boldly ſubſtituting effect for cauſe, the gentleman might have demonſtrated the inutility of the inſtitution, by the good which it had produced. Surely, this kind of reaſoning, is, of all others, the moſt falſe and the moſt fallacious.

But, ſir, if, with that poor meaſure of ability, which it hath pleaſed God to give me, I march on the ground I have been accuſtomed to tread, and which experience hath taught me to conſider as ſolid, I would venture the aſſertion, that in ſo far as our judicial inſtitutions may accelerate the performance of duties, promote the cauſe of virtue, and prevent the perpetration of crimes, in that ſame degree ought they to be eſtimated and cheriſhed. This, ſir, would be my humble mode of reaſoning, but for the wonderful diſcovery, made by the honourable mover of the reſolution on your table.

To prove, that the law of laſt ſeſſion was *improper*, as well as *unneceſſary*, we have been told of the vaſt expense of our judiciary. We are referred to the *eſtimates*, which lie before us, for *proof*, that it amounts to no leſs than the yearly ſum of 137,000 dollars. And then, attributing the whole expense to this particular law, it has been aſſumed, in argument, that to repeal the law, would operate a ſaving of 137,000 dollars.

If, ſir, the data upon which the honourable member has founded his other arithmetical arguments, are equally incorrect, the inferences drawn from them will merit but little attention. Of this whole ſum, of 137,000 dollars, (mentioned in the eſtimates of your Secretary of the Treaſury) no leſs than 45,000 dollars are ſtated as the ſuppoſed contingent expense, to accrue for the attendance of jurors, witneſſes, &c. From hence is fairly to be inferred the expectation, that much buſineſs will be actually done.

The expense, ſuppoſed to accrue from the law we are called on to repeal, is but thirty-two thouſand dollars, for ſalaries, and fifteen thouſand for contingencies; making, together, 47,000 dollars. But let us not ſtint the argument. Let us make a generous allowance. Let us throw in a few thouſands more, and take the amount at 51,000 dollars. Let that ſum be apportioned among the people of the United States, (according to the cenſus lately taken) and you will find, that the ſhare of each in-

dividual, is juſt one cent. Yet, for this paltry ſaving of a cent a man, we are called on to give up what is moſt valuable to a nation.

Undoubtedly, it is one great purpoſe of government, to protect the people from foreign invaſion, and, to be in readineſs for it, a conſiderable armament may be neceſſary. The maintenance of of naval and military force, to protect our trade, and to guard our arſenals and magazines, will alone require much money; to provide which, you muſt raiſe a conſiderable revenue. That again will, (for the collection of it) demand many officers, involving a ſtill greater expense. *All this must be paid*, and yet, all theſe proviſions are for events uncertain. An invaſion *may*, or may *not*, take place. Nay, if I may judge from certain documents, thoſe who adminiſter our affairs, have little apprehenſion of ſuch an event. *I hope they may not be deceived.* But, admitting that we have no danger to fear, or, which comes to the ſame thing, that we are properly ſecured againſt it; what elſe have the people a right to demand, in return for *the whole sum* expended in the ſupport of government? They have a right to aſk *that*, without which, protection from invaſion, nay government itſelf, is worſe than uſeleſs. *They have a right to aſk for the protection of law, well adminiſtered by proper tribunals, to ſecure the weak againſt the ſtrong, the poor againſt the rich, the oppreſſed againſt the oppreſſor.* This, which involves but little expence, is all they aſk for all their

money. And is this little to be denied? Muſt the means by which the injured can obtain redreſs, be curtailed and diminiſhed, to ſave a poor and pitiful expense? You muſt pay largely to ſupport but a ſmall force, and much is to be feared from armies. They, indeed, may turn their ſwords againſt our boſoms. They may raiſe to empire ſome daring chief, and clothe him with deſpotic power. But what danger is to be apprehended from that army of judges which the gentlemen have talked of? Is it ſo great, ſo imminent, that we muſt immediately turn to the right about, the new corps, lately raiſed, of ſixteen rank and file?

Gentlemen ſay, that we muſt, and bid us recur to the ancient ſyſtem. What is that ſyſtem? Six judges of the Supreme Court, to ride the circuit of all America, twice a year, and aſſemble twice a year, at the ſeat of government. Without inquiring into the accuracy of a ſtatement which the gentleman has made, reſpecting the courts of England, (in which, however, he will find himſelf much miſtaken) let me aſk, what will be the effect *here* of reſtoring that old ſyſtem? Caſt an eye over the extent of our country, ſee the diſtance to be travelled in making the circuits, and a moment's conſideration will ſhew, that if we reſort to the old ſyſtem, the firſt magiſtrate, in ſelecting a character for the bench, muſt ſeek leſs the learning of a judge, than the agility of a poſt-boy. Can it be expected, is it poſſible, that men, advanced in years, (for ſuch alone

have the maturity of judgment which befits that office) men educated in the cloſet, men, who, from their habits of life, muſt have more ſtrength of mind than of body; is it, I ſay, poſſible, that ſuch men can be continually running from one end of the continent to the other? Or if they could, can they find time alſo, to hear, conſider, and decide, on numerous and intricate cauſes? No, ſir, they can *not*. I have been well aſſured, by men of eminence, on your bench, that they would not hold their offices under the old arrangement.

What is the preſent ſyſtem? You have added ſeven diſtrict and ſixteen circuit judges. Theſe are fully competent to perform the buſineſs required, and the complaint is merely on the ſcore of expense: *No one has pretended that the business will not be done as speedily, and as well.* It is merely to ſave expense, therefore, that we are called on to repeal the law. But what will be the effect of this deſired repeal? Will it not be a declaration to the remaining judges, *that they hold their offices subject to your will, and during your pleasure?* And what is the natural effect of that declaration? Is it not, that, *dependent in this situation, they will lose the independent spirit essential to a due exercise of their authority?* Thus, then, the check eſtabliſhed by the conſtitution, deſired by the people, and neceſſary in every contemplation of common ſenſe, will be deſtroyed. It has been ſaid, and truly ſaid, that governments are made to provide againſt the follies

and vices of men. To ſuppoſe that governments reſt upon reaſon, is a pitiful ſoleciſm: for, *if mankind were reasonable, they would want no government.* From the ſame cauſe it ariſes, that checks are required in the diſtribution of power, among thoſe to whom it is confided, and who are to uſe it for the benefit of the people. Here, then, let me aſk, *whether the people of America have vested all power, uncontroled, in the National Legislature?* Surely they have not. They have preſcribed to it certain bounds, and, in the natural ſuppoſition, that theſe bounds might be tranſgreſſed, they have veſted, in the judges, a check, which they ſuppoſed to be ſalutary, and intended to be efficient. A check of the firſt neceſſity, becauſe it may prevent an invaſion of the conſtitution, by unconſtitutional laws. And to ſecure the exiſtence and the operation of this check, there is a proviſion, highly important, whoſe object is, to prevent any party, or faction, from intimidating or annihilating the tribunals themſelves.

On this ground, then, I ſtand, to arreſt the victory meditated over the conſtitution of my country. A victory, meditated by thoſe who wiſh to proſtrate that conſtitution, for the furtherance of their ambitious views. Not, ſir, the views of him who recommended, nor of thoſe who now urge this meaſure (for on his uprightneſs, and on their uprightneſs, I have full reliance,) but of thoſe who are in the back ground, and who have further and higher ob-

jects. To them, our national compact forms an inſurmountable barrier. Thoſe troops, therefore, which protect the out-works of the conſtitution, are to be firſt diſmiſſed; thoſe poſts which preſent the moſt formidable defence, are firſt to be carried; and then the conſtitution becomes an eaſy prey.

Let us conſider, therefore, whether we have, conſtitutionally, the power to repeal this law. And to this effect, let us hear the language of the conſtitution. "The Judicial power of the United States ſhall be veſted in one *supreme* court, and in ſuch *inferior* courts, as the Congreſs may, from time to time, ordain and eſtabliſh. The judges, both of the *ſupreme* and *inferior* courts, ſhall *hold their offices during good behaviour*, and ſhall, at ſtated times, receive for their ſervices, a compenſation, which *ſhall not be diminiſhed* during their continuance in office." On this, ſir, I have heard a verbal criticiſm, about the words *ſhall* and *may*, which appears to me wholly irrelevant. And it is the more unneceſſary, as the ſame word, *ſhall*, is applied to the proviſions contained in both members of the ſection. It ſays, "The judicial power *ſhall* be veſted in *one* ſupreme court, and in *ſuch* inferior courts as the Congreſs *may, from time to time*, ordain and eſtabliſh." The legiſlature have, therefore, the undoubted right to determine, what inferior courts they will eſtabliſh; but, when once *eſtabliſhed*, a part of the judicial power *ſhall* veſt in them. The words are imperative, and ſo they are as to the

tenure of the office, which the legiſlature, (in the exerciſe of this diſcretionary power) may have created. The judges, it ſays, *ſhall hold their offices during good behaviour.* Thus, upon the eſtabliſhment of the tribunal, the conſtitution has declared, that the judicial power ſhall veſt, and the office be held during good behaviour. The ſecond member of the ſection is equally imperative. It declares, that they *ſhall* receive a compenſation, which *ſhall not be diminiſhed* during their continuance in office.

Whether we conſider, therefore, the tenure of office, or the quantum of compenſation, the language is equally clear and concluſive. After this ſimple expoſition, gentlemen are welcome to every advantage they can derive from a criticiſm upon *ſhall* and *may*.

Another criticiſm has been made, which, but for its ſerious effects, I would call pleaſant. The amount of it is, you ſhall not take the man from the office, but you may take the office from the man; you ſhall not throw him overboard, but you may ſink his boat under him; you ſhall not put him to death, but you may take away his life. The conſtitution ſecures to a judge his office; ſays he ſhall hold it, (that is, it ſhall not be taken from him) during good behaviour; the legiſlature ſhall not diminiſh, though their bounty may increaſe his ſalary; thus, the conſtitution has made all poſſible proviſion for the inviolability of his tenure, *as far as the power of language can extend*; and, if not, I call

on gentlemen to ſhew the contrary, by giving us words more *clear*, more *precise*, more *definite*. If, after the ſtrong poſitive expreſſions, any negative terms had been added, would it not have been improper? If the framers of the conſtitution had ſaid, the judges *ſhall hold* their offices, which *ſhall not be taken away*, would not this have been ridiculous? Would it not have almoſt amounted to what, in vulgar language, is called a bull? Would it not have been inconſiſtent with the gravity of ſtyle proper for ſuch an important and ſerious ſubject? Let us, I repeat it, ſir, *be favoured with the words*, if any words can be uſed, more *poſitive*, more *inhibitory*, more *peremptory*, than thoſe contained in this inſtrument. And is it not a mere contradiction in terms to ſay, we may *deſtroy* an office which we cannot *take away*? Will not the *deſtruction of the office* as effectually *deſtroy the tenure*, as the *grant to another perſon*?

But, we are aſked, if theſe laws are immutable. Unqueſtionably, ſir, the legiſlature have a right to alter, change, modify, and amend, the laws which relate to the judiciary, ſo as may beſt comport with the intereſt, peace, and happineſs, of the people. This right, however, is confined by the limitations which the conſtitution preſcribes. Neither the legiſlative nor the executive powers, nor both, can remove a judge from office during his good behaviour. There is no power, any where, competent to this purpoſe; (ſaving always the right of a con-

queror, for that is a power not derived from, but ſubverſive of the conſtitution;) and yet, it is contended, that by the repeal of the law, that office, from which he cannot be removed, may be deſtroyed. Is not this abſurd?

But, to prove it, we have been told, that whatever one legiſlature can do, another can undo. That no legiſlature can bind its ſucceſſor, and that a right to make, involves a right to deſtroy. All this I deny, on the ground of reaſon, and on the ground of the conſtitution. What! can a man rightfully deſtroy his own children? When the legiſlature have created, by law, a political exiſtence, can they, by repealing the law, diſſolve the corporation they had made? You ſay you can undo whatever your predeceſſors have done. Your predeceſſors have borrowed money at high intereſt; can you now reduce that intereſt? They have funded the national debt; have you now a right to aboliſh that debt? Under a preſſure of neceſſity, you have given an uſurious conſideration of eight per cent. to obtain money; can you now, (becauſe it is onerous) annihilate that contract? When, by your laws, you have given to any individual the right to make a road or bridge, and to take a toll; can you, by a ſubſequent law, take it away? No; when you make a compact, you are bound by it. When you make a promiſe, you muſt perform it. Eſtabliſh the contrary doctrine, and mark what follows. The whim of the moment, becomes the law of the land.

You declare to the world that you are no longer to be trusted; that there is no safety, no security, in America. You erect a beacon, to warn all men of property that they do not approach your shores. Honeſt men will avoid you. They will fly from you. They will conſider you as a den of robbers. How can you aſk any one to put confidence in you, when you are the firſt to violate your own contracts? The poſition, therefore, that the legiſlature may *rightfully* repeal every law made by a preceding legiſlature, is untrue, when teſted merely by reaſon. Still more untrue is it, when compared with the precepts of the conſtitution. *The national legiſlature of America does not poſſeſs unlimited power,—it has no pretence to omnipotence.* It is reſtrained by the conſtitution. And what does the conſtitution ſay? "You ſhall make no ex poſt facto law." Is not this an ex poſt facto law?

Gentlemen, to ſhew that we may properly repeal the law of laſt ſeſſion, tell us, it is *mere theory*. For argument ſake, it ſhall be granted. What *then* is the language of reaſon? Try it. *Put it to the teſt of experiente.* If experience, after two or three years ſhall point out defects, or if they can now be pointed out, amend the law. What reſpect can the people have for a legiſlature, that haſtily, and without reflection, meets but to undo the acts of its predeceſſor? Is it prudent, is it decent, even if the law were improper, thus to commit our reputation, and theirs? Is it wiſe, nay, is it not highly

dangerous, to make this call on the people, to decide which of us are fools? *One of us must be.*

Such, sir, will be the effect of this hasty repeal, on the public mind. What will it be on the injured man who seeks redress in your courts, and whom you have thus deprived of his right? You have saved him a miserable cent, at the price, perhaps, of his utter ruin.

The honourable mover of this resolution, sir, in persuading us to adopt it, has told us not only what is, but what is to be. He has told us that suits have decreased, and that they will decrease. Nay, relying on the strength of his pre-conceptions, he tells us, that the internal taxes will be repealed, and grounds the expediency of repealing the judiciary law, upon the annihilation of those taxes. Thus, taking for granted the non-existence of taxes which still exist, he has inferred from their destruction, and the consequent cessation of suits, the inutility of the judiciary establishment: And when he shall have carried his present point, and broken down that system, he will tell us perhaps, that we may as well abolish the internal taxes, for that we have no judges to enforce the collection.

But what, I ask, is to be the effect of these repeals, and of all these dismissions from office? I impeach not the motives of gentlemen who advocate this measure. In my heart, I believe them to be upright. But they see not the consequences. We are told, that the states want, and ought to have

more power. We are told, that they are the legitimate guardians, from whom the citizen is to derive protection. *Their* judges are, I ſuppoſe, to execute *our* laws. Judges appointed by ſtate authority, ſupported by ſtate ſalary, looking for promotion to ſtate influence, and dependent on ſtate party. *Are thoſe the judges contemplated by this conſtitution?* There are ſome honourable gentlemen now preſent who ſat in the convention when it was formed. I appeal to their recollection. Have they not ſeen the time, when the fate of America was ſuſpended by a hair? My life for it, if another be aſſembled, they will part without doing any thing. Never in the flow of time, was there a moment ſo propitious, as that in which the convention aſſembled. The ſtates had been convinced, by melancholy experience, how inadequate they were to the management of our national concerns. The paſſions of the people were lulled to ſleep. State pride ſlumbered—no ſooner was the conſtitution promulgated than it awoke. Oppoſition was formed. It was active and vigorous, but it was vain. The people of America bound the ſtates down by this compact.

There was in it, a proviſion tending to exhibit the ſubliméſt ſpectacle of which my mind can form an idea. It was that of a great ſtate, kneeling at the altar of juſtice, and ſacrificing its pride to a ſenſe of right. I flattered myſelf, that America would behold this ſpectacle—but that important proviſion has been repealed. It gave way to the oppoſition

of the ſtates. It is gone. Another great bulwark is now to be removed, and you are told, that we muſt look to the ſtates for protection. Your internal revenues alſo, are to be ſwept away; ſo that no evidence, no exertion, no trace of the national power is to be perceived through the whole interior of America. And in order that it may be confined to your coaſts, and be known there, only at particular points, your ſole reliance for revenue, is, henceforth, to be placed upon commercial duties. *In this reliance you will be deceived.* But what is to be the effect of all theſe changes? I am afraid to ſay; I will leave it to the feelings, and to the conſciences of gentlemen. But remember, *the moment this union is diſſolved, we ſhall no longer be governed by votes!*

Examine the annals of hiſtory. Look into the records of time. See what has been the ruin of every republic. The vile love of *popularity.* Why are we here? We are here to *ſave the people* from their moſt *dangerous* enemy, *to ſave them from themſelves.* What cauſed the ruin of the republics of Greece and of Rome? Demagogues, who, by flattery, prevailed on the populace to eſtabliſh deſpotiſm. But if you will ſhut your eyes to the light of hiſtory, and your ears to the voice of experience, ſee, at leaſt, what has happened in your own times. In 1789, it was no longer a doubt with enlightened ſtateſmen, what would be the event of the French revolution. Before the firſt day of January, 1790,

the only question was, who will become the deſpot. The word liberty, indeed, from that day to this, has been continually ſounded and reſounded, but the thing had no exiſtence. There is nothing left but the word.

We are now about to violate our conſtitution. Once touch it with unhallowed hands, ſacrifice one of its important proviſions, and we are gone. *We commit the fate of America to the mercy of time and chance.*

I hope the honourable gentlemen from Maryland will pardon me, if, from the ſection of the law, he has cited, I deduce an inference diametrically oppoſite to that, for which he has contended. He has told us, that the laſt Congreſs, in reducing the judges of the ſupreme court from ſix to five, have exerciſed the right which is now queſtioned, and made, thereby, a legiſlative conſtruction of this clauſe in the conſtitution, favourable to the motion on your table. But look at the law. It declares that the reduction ſhall not take place, until, by death or reſignation, there ſhall remain only five. Thus, in the very moment when they expreſs *their opinion* that five judges are ſufficient, they acknowledge *their incapacity* to remove the ſixth. The legiſlative conſtruction, therefore, is, that they have *not* the right which is now pretended.

The ſame honourable member has cited other caſes from the ſame law, which *(if I underſtood his ſtatement)* amount to this, that Congreſs have *encreaſed* the number of diſtrict judges: but ſurely

this cannot prove that we have a right to *diminish* the number. It will, I think, appear, ſir, that this law, ſo much complained of, is in nowiſe chargeable with maintaining the dangerous doctrine to be eſtabliſhed by its repeal.

The whole argument in favor of the motion comes to this ſimple propoſition, *let us get rid of theſe judges to ſave expenſe.* We can *repeal* the law, becauſe we *made* the law, we have the *power*, let us *exerciſe* it. But, let me aſk ſir, if this argument will not go to prove any thing. Will it not go to the abolition of the debts incurred by the laſt Congreſs? Shall it be ſaid that the caſes differ becauſe the debt reſults from a contract with the creditor ſanctioned by the legiſlature? Sir, you have made a contract with the judges, ſanctioned by higher authority. You indeed created the office, but when created, the conſtitution fixed its duration. The firſt magiſtrate in our country with this conſtitution in his hand, applies to men of high character and great ability. He aſks them to quit a lucrative and honorable profeſſion, to abandon their former purſuits, to break their ancient connections, and give their time, their talents, and their virtues, to the ſervice of their country. What does he offer as a compenſation? He offers *a high and honorable office, to be holden by no capricious will, to depend on no precarious favor.* The duration is to be terminated only by *death* or *miſconduct*. The legiſlature has affixed a ſalary which they may *encreaſe*, but cannot *diminiſh*. Up-

on theſe proffered terms, the judge accepts. *The contract is then complete.* A contract which reſts no longer on the legiſlative will. He is immediately under the protection of the conſtitution itſelf, which, neither the Preſident, nor the legiſlature, can defeat. *His authority reſts on the ſame foundation with yours.* It is derived from the ſame ſource. Will you pretend that you are bound by your contract with him who lent you money, at eight per cent. intereſt, and that you are not bound by your contract with him, who devotes his life to your ſervice! Will you ſay that the conſideration you have received, is to make a difference, and that paltry pelf is to be preferred to manly worth? Is *that* to be reſpected, and *this* deſpiſed? Surely ſir, the contract, with a judge, is, of all others, the moſt ſolemn. It is ſanctioned by the higheſt of all authority. Can you then violate it? If you can, you may throw this conſtitution into the flames. It is gone—It is dead.

After Mr. Morris concluded, the Senate adjourned to Monday the eleventh. That day they were engaged in other buſineſs, ſo that the debate was not re-aſſumed, until Tueſday, the twelfth, when it was opened by Mr. Jackson, of Georgia, who ſpoke as follows:

I riſe with an impreſſion of awe on the preſent queſtion; for we muſt tread on conſtitutional ground, which ſhould not be lightly touched on, nor too haſtily decided. Every ſtep we take ought to be well examined, and our minds convinced before

we give that vote which cannot be recalled, and which will fix a principle in legiſlative conſtruction, which, perhaps, will prevail as long as we remain a nation.

In the early ſtage of this diſcuſſion, I had almoſt determined to ſay nothing, and am at preſent determined not to ſay much; but a juſtification of the vote I ſhall give, has impelled me to offer my reaſons for it to the ſtate I repreſent: and I have made up my mind decidedly, to vote for the reſolution before you, if I cannot be otherwiſe convinced.

I conceive, that as this ſubject requires from us a legiſlative conſtruction, that conſtruction may as well, and indeed better, be now made; there will, undoubtedly, hereafter, be a claſhing of powers. I, therefore, think it is much better to decide it now, when the injury is felt, than to ſuffer it to take root until it ſhall extort a different and more violent deciſion than that of a deliberative body.

The reaſons for the reſolution have been ſo ably ſtated, and ſtrongly enforced by the gentleman from Kentucky who moved it; as to expediency and the burthen of the expenſes on the preſent ſyſtem, I ſhall therefore ſay little about them.

The expenſes, however, of the judiciary eſtabliſhment, I deem the leaſt important conſideration attached to the ſubject. Yet, I do not agree with the gentleman who has ſpoken, that the expenſe is trifling. The gentleman from New-York, had

held up the insignificancy of a cent a person, and had told us of Alfred's purse, which no one dared to take away. Let that gentleman calculate twelve souls to a family, and he will see that each family would pay 12 cents; a sum however insignificant to the pocket of that gentleman, that might furnish a comfortable meal to a poor family. With the gentleman from Kentucky, however, I contend that the principle is as much settled by one cent, as by a million. And this observation becomes incalculably dangerous, if it is to be drawn into precedent on every new project or improper measure, that it costs but a cent a person. And as to the remarks about Alfred, I might retaliate upon the gentleman, and say, that at that day, 12 cents might have been a year's salary for a judge.

We have been asked, if we are afraid of having an army of judges. For myself, I am more afraid of an army of judges under the patronage of the President, than of an army of soldiers. The former can do us more mischief. They may deprive us of our liberties, if attached to the executive, from their decisions; and from the tenure of office contended for, we cannot remove them; while the soldier, however he may act, is enlisted, or if enlisted, only enlisted for two years; whilst the judge is enlisted for life, for his salary cannot be taken from him. [See 2d division, 18 Sect. 1st. Art. Constitution.] Sir, it is said these evils will not happen. But what security have we for the truth of the declaration?

Have we not seen sedition laws? Have we not heard judges crying out through the land sedition, and asking those whose duties it was to inquire, is there no sedition here? It is true, the sedition law had expired with the last administration, and he trusted it would not exist, or at least be acted on, under the virtuous Jefferson. But hereafter, if it should exist, your judges under the cry of sedition and political heresy, may place half your citizens in irons. I thank God, that no such law now exists, or is likely to exist. I thank God, that we are not now under the influence of an intolerant clergy, as is evident from their abuse of the President; and that we are not under dread of the patronage of judges, is manifest from their attack on the Secretary of State. And I trust, that we shall long keep this patronage off, by not sanctioning the religious persecution of the clergy on the one hand, or the political violence of the judges on the other.

But I will forbear making any further remarks of this kind, and go into an examination of the constitutional grounds.

[Gen. JACKSON here quoted the 3d Art. 1st Sect. of the constitution.]

Here then are two tribunals. First, the Supreme Court, the creature of the constitution, the creature of *the people*; the other, the inferior jurisdictions, the creature of the legislature. And notwithstanding the play of gentlemen upon the words *shall* and *may*, they are in meaning essentially different. The

word, *shall*, applied to the Supreme Court, is imperative and commanding; while the word, *may*, applied to the inferior courts, is discretionary, and leaves to the legislature a volition to act, or not to act, as it sees fit.

Again, why are the peculiar and exclusive powers of the supreme court designated in the following section of the constitution, but because the constitution considered that tribunal as absolutely established; while it viewed the inferior tribunals as dependent upon the will of the legislature. And that this was the case was evident from the conduct of the Supreme Court on the pension-act, which, that court had some time since declared unconstitutional, and which declaration, he was convinced, would not have been hazarded by an inferior tribunal.

But does this conclusion rest on judicial power alone? Is it no where else found under other heads of constitutional power? Yes sir, under the legislative head of power, which is the first grant of power made by the constitution. For by the 8th section of the 1st article of the constitution, after enumerating the power of laying taxes, &c. it is declared in the 9th division thereof, "to extend to constitute tribunals inferior to the supreme court." Here then is a legislative power given expresly to that body, without restriction or application to any other branch of the national government. Let those lawyers who hear me decide on the construction of all grants or deeds, if two grants be made in

the ſame deed, to two different powers or perſons, if the firſt does not excluſively veſt?

Is there a ſingle argument, that can be aſſigned to oppoſe this conſtruction of the conſtitution? Do not the obſervations of gentlemen, who inſiſt upon the permanent tenure of the judicial office, place the creature *above* its creator, man *above* his God, the model *above* its mechanic? A good mechanic, when he conſtructs a machine, tries it: and if it does not ſucceed, he either mends or throws it away. Is there not the ſame neceſſity for acting in the ſame way with the inferior tribunals of the judiciary, which is no other than the machine of the legiſlature?

But, upon the principles of gentlemen, the law which creates a judge, cannot be touched. The moment it is paſſed, it exiſts to the end of time. What is the implication of this doctrine? To alter or amend what may greatly require alteration or amendment, it is neceſſary to return to the creator, and to enquire what this creator is. My principle is, that the creator is the people themſelves; that very people of the United States, whom the gentleman from New-York had declared ourſelves to be the guardians of, to ſave the people themſelves from their greateſt enemies; and to ſave whom from deſtroying themſelves he had invoked this houſe. Good God, ſaid Mr. JACKSON, is it poſſible that I have heard ſuch a ſentiment in this body? Rather ſhould I have expected to have heard it

law under which ſo many of our citizens had been impriſoned, for writings and ſpeakings, and one among others for wiſhing that the wadding of a gun had been lodged in a certain Preſidential part.

The gentleman had dwelt on the inconveniences and evils of the old ſyſtem, and had particularly condemned that part of it, which as he termed it, converted the judges into poſt-boys. But, I will appeal to the gentleman, if, in England, where ſo much more buſineſs is done, there are more than 12 judges, and whether thoſe judges do not ride the circuit. And why ſhall our judges not ride the circuits? Shall we have ſix judges ſitting *here* to decide caſes which require a knowledge of the laws, the morals, the habits, the ſtate of property of the ſeveral ſtates? Would not this knowledge be much better obtained by their riding the circuits, and in the ſtates themſelves making themſelves acquainted with whatever relates to them, and the caſes of appeals to come before them. It has been remarked by a celebrated writer on the Engliſh conſtitution, that one of the greateſt political evils that could befal a people, was the exiſtence of large judiciary bodies. To illuſtrate his ideas he had inſtanced the Parliaments of France. If the ſpirit, which, laſt ſeſſion, gave exiſtence to ſixteen new judges, continued, who could ſay by what number they would be limited. They might indeed ſoon become, what they had been likened to, an army of judges.

I do not wiſh to be ſevere in my remarks on the conduct of the late adminiſtration. I admire the private character of Mr. Adams. But I do believe the ſucceſſion of his political acts tended ultimately to accumulate in, and attach all powers to, a particular perſon or favourite family.

If I wiſhed to beſtow on Mr. Jefferſon this maſs of patronage, which I contend this horde of officers beſtows, I ſhould be in favour of the bill that it is now moved to repeal; but as a political perſon, I am no more for Thomas Jefferſon than for John Adams. When he acts according to my opinion, right, I will ſupport him; when wrong, oppoſe him; and I truſt a majority on this floor will act in the ſame way.

A gentleman from Maſſachuſetts, has aſked, if ſuits will go on diminiſhing, and if the millenium is ſo near at hand. Sir, different opinions are held on this ſubject; for ſome ſuppoſe the millenium to have arrived long ſince, and others that it may arrive, and, others again, that it never will arrive; but there is one thing certain, that the more courts you have, the greater temptation there is for litigation, and more ſuits, or rather evils, will flow from them. Law itſelf is but a neceſſary evil; for if mankind were perfect, were it not for their frailties and paſſions, there would be no occaſion for it; and lawyers are a ſtill greater evil, although, he acknowledged, a neceſſary one. They ſeldom diſcourage litigious ſuitors, and ſwarm in our courts; and there are here, as well as in every

other country, perſons ſo fond of law and of perſecution, that rather than not be in courts at all, they would direct their lawyers, as I have been formerly told of a man who applied for advice, and was informed he had no ground of action, to bring then a ſpite action. The ſtate courts are open and competent to moſt of the inferior court buſineſs, and it ought to be thrown into that channel as much as poſſible.

With reſpect to the uſefulneſs of the additional judges, created by the act of laſt ſeſſion, it was perhaps unneceſſary to add any thing to what had been ſo ably obſerved by the gentleman from Kentucky. But I will ſtate, for the information of the Senate, that in the ſouthern ſtates of Georgia, South and North Carolina, a ground of great litigation is removed, one which had originated at leaſt two hundred and fifty ſuits. Miller & Co. had obtained a patent for a ginning machine, (God knew where it came from, but I believe that neither of them invented it,) ſo as to make thoſe ſtates tributary to them, and embroil them in diſputes. South Carolina had purchaſed the patent for fifty thouſand dollars, and had therefore dried up this ſource of litigation in that ſtate.

The recovery of Britiſh debts, too, was nearly over. This had been a fruitful ſource of litigation. Our citizens had been ſued, and their late hard earnings of property had been ſeized, to ſatisfy Britiſh demands, whilſt their former property had been taken from them by Britiſh arms, during the war.

I am ſurpriſed to hear the cry, that our liberties and the conſtitution are endangered, from the quarter from which it is now urged. When ſuch remarks had been made by thoſe gentlemen with whom I generally acted on former occaſions, the inſtantaneous cry was againſt demagogues, who, by artfully inflaming the paſſions of the people againſt the government, wiſhed to break down the conſtitution.

A gentleman had talked about a victory meditated over the conſtitution. Not by the Preſident. Not by us. By whom then was it meditated? Was it by the Houſe of Repreſentatives? Or was it by the people themſelves; that ſame people whom we were to ſave from their greateſt enemy, themſelves? For my part, I believe in the meditation of no ſuch victory. Sooner, for my part, than participate in it, by voting for this reſolution, if I thought it would have ſuch a tendency, I would cut off my hand, or cut out my tongue. I reſpect and love the conſtitution, and my great wiſh is, with father Paul, to cry out, as reſpects it, *esto perpetua.*

Mr. TRACY, of Connecticut. Feeble as I am, I have thought it my duty to offer my ſentiments on this ſubject. Owing to the ſeverity of indiſpoſition, I have not been in my place, nor have I heard any of the diſcuſſion. This circumſtance will be my apology, if, in the remarks I ſhall make, repetitions ſhall occur, on the one hand, and apparent inattention to arguments, on the other.

Having been a member of this government during ſeveral years, and being impreſſed with the difficulties attending the formation of a judiciary ſyſtem, I think it proper to give a conciſe hiſtory of legiſlative proceedings, on this important ſubject. Permit me to ſay, ſir, that the firſt inſtitution of ſuch a ſyſtem, muſt be an experiment. It is impoſſible to aſcertain, until tried, the effects of a ſyſtem, co-extenſive with the vaſt territory of the United States, and which ought to be adapted to the different laws and habits of the different ſtates.

Soon after the firſt law was enacted, as early as the year 1793, and, I believe, ſooner, complaints were made of the ſyſtem of circuit courts. The Union then being divided into three circuits, and two of the ſix judges were obliged to attend each court, if one judge failed, all the buſineſs, of courſe, was continued to the next term. Judges complained of the diſtance they had to travel, and ſuitors and lawyers complained of delays. In 1793, if my memory is correct, the law paſſed allowing one judge to attend, with the diſtrict judge in each diſtrict, with ſome other modifications not important in the preſent view of the ſubject. If, by reaſon of diſtance, badneſs of roads, ſickneſs, or any other accident, this one judge failed of attendance, or if he and the diſtrict judge differed on any point, a delay was occaſioned.

If the ſame judge attended the ſame circuit at the next term, another delay, and ſo on, till expe-

riment taught us, that ſome alteration in the ſyſtem was requiſite. It will be recollected, that the judges had to travel over this extenſive country, twice in each year, and to encounter the extremes of both heat and cold. Of this they complained; but this was not all; *the business was not done.*

At ſeveral ſeſſions of Congreſs, the ſubject of the circuit courts was before them; committees were appointed in both houſes, and in more than one communication of the executive, at the commencement of ſeſſions, a reviſion of the ſyſtem was recommended. I cannot, on memory, detail the exact particulars, or order of time; but in the ſpeech made by the Preſident, at the opening of the ſeſſion 1799, the ſubject is ſtated as follows: "To give due effect to the civil adminiſtration of government, and to enſure a juſt execution of the laws, a reviſion and amendment of the judiciary ſyſtem is indiſpenſably neceſſary. In this extenſive country, it cannot but happen, that numerous queſtions, reſpecting the interpretation of the laws, and the rights and duties of officers and citizens, muſt ariſe. On the one hand, the laws ſhould be executed; on the other, individuals ſhould be guarded from oppreſſion; neither of theſe objects is ſufficiently aſſured, under the preſent organization of the judicial department: I therefore earneſtly recommend the ſubject to your ſerious conſideration." Although this ſubject had been recommended before, and committees had contemplated a reviſion and

alteration of the ſyſtem, I do not remember, that a bill had ever been preſented to either houſe of Congreſs, until 1799. In that ſeſſion, a bill was reported ſimilar in its features to the act which paſſed laſt ſeſſion. It might have been acted upon in the Houſe of Repreſentatives; of this, however, I am not confident; but I recollect it was printed, and the members of both Houſes had it before them; and, at the laſt ſeſſion, with ſome alterations and amendments, it was enacted into a law. I believe all parties wiſhed for a reviſion and amendment of the ſyſtem, in reſpect to circuit courts; the difference of opinion was principally this; ſome ſuppoſed an increaſe of the judges of the ſupreme court, to ſuch a number, as would render the duties of the circuit practicable for them, and provide for the completion of buſineſs, would be the beſt amendment; and others thought the law, as it paſſed, was preferable.

I acknowledge, that in deliberating upon this ſubject, we always aſſumed the principle, that the eſtabliſhment of courts was important to protect the rights of the people; we did not fear an army of judges, as has been hinted by the gentleman who was laſt up (Mr. JACKSON.) In this opinion we might be miſtaken, but we were honeſt in our profeſſions; although ſome believed that more of the buſineſs of the United States might be confided to the ſtate courts; yet, it is not within my recollection, that the queſtion was conſidered, in any meaſure, a party

queſtion. I am confident, that at the ſeſſion of 1799, and for a long time before that, the friends of this law, which eventually paſſed laſt winter, could not, nor did they contemplate any change of adminiſtration. A reviſion of the ſyſtem was long a ſubject of deliberation; we believed an increaſe of circuit judges, to the number requiſite to perform the duties, would be an inconvenient increaſe of the ſupreme court; and though it was deſirable for the judges of the ſupreme court to ſee the people, and be ſeen of them, yet the preference was given to the ſyſtem now propoſed to be repealed. We ſuppoſed it would be an evil to increaſe the number of judges of the ſupreme court to 13, 15, or 17. A court, which is to act together, ſhould not be numerous; on this ſubject, all men have agreed; here may be danger of an "*army of judges*," as the gentleman ſays; for, although in Great Britain, the twelve judges are ſometimes called to give an opinion; yet no man will feel equal confidence in a tribunal of judges for the buſineſs of a court, conſiſting of many, as of few. From three to five, the good ſenſe and experience of all nations has declared to be about the proper number; and we thought it conducive to the general good, to eſtabliſh tribunals in ſuch manner, as to carry juſtice to the door of every man.

In this modification of the ſyſtem, the juriſdiction of the circuit court has been extended, as it reſpects the ſum in demand, of which they are to

take cognizance, and as it reſpects the diſputes which ariſe concerning the title of lands; and excluſive juriſdiction is given of all crimes committed within fifty miles of their place of ſeſſion. The intention was, to inſure a prompt execution of juſtice, and experiment alone, can teſt the wiſdom of the plan.

I take it to be a ſound rule, adopted by all wiſe and deliberative bodies, not to repeal an exiſting law, until experiment ſhall have diſcovered errors, or unleſs there is a vice ſo apparent on the face of the law, as that juſtice ſhall require an immediate deſtruction of it. Has there been time to gain information by experiment? No man will pretend this as a juſtification of the repeal; for the little time the law has been in force, ſo far as I have obtained any knowledge upon the ſubject, it has gained credit.

Another maxim in legiſlation, I think, is correct, not to give up a law in exiſtence, which is converſant about extenſive and important concerns of the community, and about which there is a neceſſity of enacting ſome law, without ſeeing clearly what can be ſubſtituted for it, and that the ſubſtitute has manifeſt advantages. This reſolution leads to no reſult but a repeal. I have ſtated the errors of the former ſyſtem of circuit courts, and if *expense* is an objection to the preſent ſyſtem, as I have heard urged out of doors, the ſame, or nearly as much, muſt be incurred, if we increaſe the number of judges of the ſupreme court, to effect a reform in the circuit court.

Why repeal this law, then, and leave us without any, or without any adequate to its purpoſe?

Is this ſyſtem ſo very vicious, that it deſerves nothing but abhorrence and deſtruction? It coſts us a little more than thirty thouſand dollars, and by it the number of circuit judges is increaſed to ſixteen; and by it likewiſe is contemplated reducing the number of ſupreme judges to five, *when it can conſtitutionally be done.* Is the expenſe an object, when by that expenſe we extend the juriſdiction of a court over this vaſtly extenſive growing country, and carry law and protection to every man? This country is in a ſingular condition; a great tract of unſettled lands is peopling with rapidity, and numerous immigrations increaſe our population far beyond its natural increaſe; is it not of importance, that courts ſhould be located among them, early to correct the reſtleſs ſpirit, which is frequent in new and ſcattered ſettlements? And are not the immigrations compoſed of ſuch as require the prompt aſſiſtance of the law, to preſerve among them regularity? Puniſhment, to us, and to all good men, ſhould be a ſtrange work, but to prevent crimes, is the work of a God. I ſpeak to gentlemen, who have, many of them, graced the judges' bench, and adorned the profeſſional robe they have worn, and am therefore not obliged to be particular that I may be underſtood; a word to the wiſe will be ſufficient. A judiciary, in a national point of view, is abſolutely neceſſary, and an extenſion of it to every national

purpoſe is equally neceſſary. To depend upon ſtate courts, not under obligations, nor amenable to you, beſides having as much buſineſs allotted to them by the reſpective ſtates as they can accompliſh, and depending upon them, and not on us for exiſtence; will require only to be mentioned, to be exploded. Locating your judges in various parts of the country, by them promulgating the national laws, which it is well known has been a ſubject of great difficulty, and giving them daily opportunity of mixing with people, not well diſpoſed to order and law; may prevent diſorders, and inſurrections, and ſave millions of expenſe, which pecuniary ſaving will be the leaſt of the important events ariſing from ſuch a ſyſtem.

But it will probably be ſaid, the courts have not buſineſs to employ them; and the documents received from the executive will be produced in evidence. And it may further be ſaid, the Preſident has, in his meſſage, recommended a repeal of this law. The words of the meſſage are, "The judiciary ſyſtem of the United States, and eſpecially that portion of it lately erected, will of courſe preſent itſelf to the contemplation of Congreſs; and that they may be able to judge of the proportion which the inſtitution bears to the buſineſs it has to perform, I have cauſed to be procured from the ſeveral ſtates, and now lay before Congreſs, an exact ſtatement of all the cauſes decided ſince the firſt eſtabliſhment of the courts, and of thoſe that were

depending when additional courts and judges were brought in to their aid."

Is this a recommendation to repeal? Suppoſe for argument ſake it is. Let us look at this "exact" ſtatement. In the recapitulation, 19th page of document 8, there appears to have been inſtituted 8276 ſuits, and pending when this court went into operation, 1539. But on further inſpection, it will be found that Maryland is entirely omitted: this omiſſion is unaccountable, ſince the means of knowledge were ſo near at hand. 119 cauſes undecided in Tenneſſee; 134 in North-Carolina, and 331 in Virginia, are omitted; making in the whole an error of 5 or 600 cauſes. In addition to this the number of ſuits in New-York are not ſtated correctly by the ſtatement of the attorney when he made the return, and not one is carried out as pending in the recapitulation; and the return of Maſſachuſetts is incorrect on its face; ſo that nothing more than conjecture can be derived from this "exact" ſtatement. The Preſident is uſually more correct, and how this peremptory language in the meſſage comports with the document, every man can ſee for himſelf. I am not diſpoſed to attribute intentional error to any man, much leſs to the executive; but in point of uſe the ſtatement amounts to nothing. We may juſt as well imagine without it as with it, how many ſuits were pending, at the inſtitution of the new courts.

But I acknowledge that the number of ſuits pending is not, in my mind, any criterion upon which a correct judgment may be formed of the utility or neceſſity of courts; or to ſay the moſt of it, it forms but one ground of judging, and that not a very concluſive one. In a country thinly ſettled, it is frequently as important to eſtabliſh courts, as in a more populous country; and as this government is ſituated, it may be more ſo; and yet the number of ſuits will bear no proportion. Why did we eſtabliſh courts in our territorial government but on this principle?

A number of courts properly located will keep the buſineſs of any country in ſuch condition as but few ſuits will be inſtituted; and courts, badly organized, will diſcourage ſuitors, and there will be but few actions returned. From the number of ſuits alone, there can no ſound judgment be formed.

But there is another objection to the repeal of the judiciary law, which in my mind is concluſive; I mean the letter and ſpirit of the conſtitution.

In the formation of every government in which the people have a ſhare in its adminiſtration, ſome eſtabliſhed and indiſputable principles muſt be adopted. In our government, the formation of a legiſlative, executive, and judiciary power, is one of the incontrovertible principles, and that each ſhould be independent of the other ſo far as human frailty will permit, is equally incontrovertible. Will it be

expected, that I ſhould quote Sidney, De Lolme, Monteſquieu, and a hoſt of elementary writers to prove this aſſertion? There is probably no conflict of opinion upon this ſubject. When we look into our conſtitution of government, we ſhall find in every part of it, a cloſe and undeviating attention to this principle. Our particular form is ſingular in its requirements, that full force and operation be given to this all important principle. Our powers are limited, many acts of ſovereignty are prohibited to the national government, and retained by the ſtates, and many reſtraints are impoſed upon ſtate ſovereignty. If either, by accident or deſign, ſhould exceed its powers, there is the utmoſt neceſſity that ſome timely checks, equal to every exigency, ſhould be interpoſed. The judiciary is eſtabliſhed by the conſtitution for that valuable purpoſe.

In the Britiſh government the legiſlature is omnipotent to every legiſlative effect, and is a perpetual convention for almoſt every conſtitutional purpoſe. Hence it is eaſy to diſcern the different part which muſt be aſſigned to the judiciary in the two kinds of government. In England the executive has the moſt extenſive powers; the ſword or the military force; the right of making war, and, in effect, the command of all the wealth of the nation, with an unqualified veto to every legiſlative act. It is, therefore, rational for that nation to preſerve their judiciary completely independent of their ſovereign. In

the United States the caution muſt be applied to the exiſting danger; the judiciary are to be a check on the executive, but moſt emphatically to the legiſlature of the union, and thoſe of the ſeveral ſtates. What ſecurity is there to an individual, if the legiſlature of the union, or any particular ſtate, ſhould paſs a law making any of his tranſactions criminal, which took place anterior to the date of the law? None in this world, but by an appeal to the judiciary of the United States, where he will obtain a deciſion that the law itſelf is unconſtitutional and void, or by a reſort to revolutionary principles, and exciting a civil war. With a view to thoſe principles, and knowing that the framers of our conſtitution were fully poſſeſſed of them, let us examine the inſtrument itſelf. Article 3d, ſect. 1ſt. "The judicial power of the United States ſhall be veſted in one ſupreme court, and in ſuch inferior courts as the Congreſs may, from time to time, ordain and eſtabliſh. The judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour; and ſhall, at ſtated times, receive for their ſervices, a compenſation which ſhall not be diminiſhed during their continuance in office." Are there words in the Engliſh language more explicit? Is there any condition annexed to the judge's tenure of office, other than good behaviour? Of whom ſhall your judges be independent? We are led to an erroneous deciſion on this, as well as many other governmental ſubjects, by conſtantly recurring to

Great-Britain. That their courts ſhould be independent of their ſovereign is an important object; he is the fountain of honour and power, and can do no wrong. Our Preſident, at leaſt for ſeveral years paſt, has been conſidered the fountain of diſhonour and weakneſs, and if there was any maxim upon the ſubject, it was that he could do no right. Of courſe the great object of the independence of the judiciary muſt here have reference not only to our executive, but our legiſlature. The legiſlature, with us, is the fountain of power. No perſon will ſay that the judges of the ſupreme court can be removed, unleſs by impeachment and conviction of miſbehaviour. But the judges of the inferior courts, as ſoon as ordained and eſtabliſhed, are placed upon preciſely the ſame grounds of independence with the judges of the ſupreme court. Congreſs may take their own time to ordain and eſtabliſh, but the inſtant that is done, all the rights of independence attach to them.

If this reaſoning is correct, can you repeal a law eſtabliſhing an inferior court, under the conſtitution? Will it be ſaid, that although you cannot remove the judge from office, yet you can remove his office from him? Is murder prohibited, and may you ſhut a man up, and deprive him of ſuſtenance, till he dies, and this not be denominated murder? The danger in our government is, and always will be, that the legiſlative body will become reſtive, and, perhaps, unintentionally break down the barriers of

of our conſtitution. It is incidental to man, and a part of our imperfections, to believe, that power may be ſafely lodged in our hands. We have the wealth of the nation at command, and are inveſted with almoſt irreſiſtible ſtrength; the judiciary has neither force nor wealth to protect itſelf. That we can with propriety modify our judiciary ſyſtem, ſo that we always leave the judges independent, is a correct and reaſonable poſition; but if we can, by repealing a law, remove them, they are in the worſt ſtate of dependence.

I have exhauſted myſelf, and I fear, the patience of the Senate, and regret, exceedingly, that my indiſpoſition prevented me from a better preparation upon this important queſtion. I have attempted to ſhow, that the eſtabliſhment of a judiciary ſyſtem, for this country, is, and muſt be attended with difficulties, and that the legiſlature have taken ſuch meaſures as, to a majority of them, appeared moſt reaſonable, after much attention to the ſubject, to cure the evils of the old ſyſtem, by the ſubſtitution of a new ſyſtem.

And let it be remarked, that the law, now under conſideration, although it modified our courts, is ſtrictly guarded againſt a violation of the principles I have here contended for. The ſupreme court is to conſiſt of but five judges after the next vacancy ſhall happen; and the diſtrict judges of Tennеſſee and Kentucky are aſſociated with a circuit judge, to perform the duties of circuit judges, which duties, it

is well known, they performed ever ſince the diſtrict courts were eſtabliſhed; and, in the clauſe which increaſes their ſalaries, they are ſtyled the diſtrict judges; and all the alteration, made in their circumſtances, is, an increaſe of duty, and of ſalary. I have attempted to ſhew the primary neceſſity of rendering the judiciary of this confederated government, completely independent, not only of the executive, but, eſpecially ſo, of the legiſlature.

And, by adverting to the words of the inſtrument itſelf, I have attempted to ſhow, that the judiciary are ſecured, ſo far as words can do it, as well from a circuitous removal, by repealing the law conſtituting the court of which they are judges, as by any direct removal.

I am ſtrongly impreſſed with the magnitude of this ſubject. Perhaps the whims of a ſick man's fancy have too much poſſeſſed me, to view it correctly. But, ſir, I apprehend the repeal of this law will involve in it the total deſtruction of our conſtitution. It is ſupported by three independent pillars; the legiſlative, executive, and judiciary; and, if any rude hand ſhould pluck either of them away, the beautiful fabric muſt tumble into ruins.

The judiciary is the center pillar, and a ſupport to each, by checking both. On the one ſide is the ſword, and, on the other, the wealth of the nation; and it has no inherent capacity to defend itſelf. Theſe very circumſtances united, may provoke an attack, and whichever power prevails ſo far as to

veſt in itſelf directly, or indirectly, the power of the judiciary by rendering it dependent; it is the preciſe definition of tyranny, and muſt produce its effects. The Goths and Vandals deſtroyed not only the government of Rome, but the city itſelf; they were ſavages, and felt the loſs of neither; but if it be poſſible there can be an intention, like the ſon of Manoah, with his ſtrength, without his godlineſs, to tumble *this fabric to the earth*, let it be remembered it will cruſh, in one undiſtinguiſhed ruin, its perpetrators, with thoſe whom they may call their political enemies.

I moſt earneſtly entreat gentlemen to pauſe and conſider; I apprehend the repeal of this act will be the hand writing on the wall, ſtamping *Mene Tekel* upon all we hold dear and valuable in our conſtitution. Let not the imputation of inſtability, which is caſt upon all popular bodies, be verified by us; in adopting laws to day, and repealing them to-morrow, for no reaſon, but that we have the power, and will exerciſe it.

This conſtitution is an invaluable inheritance. If we make inroads upon it and deſtroy it, no matter with what intentions, it cannot be replaced. we ſhall never have another.

The Senate adjourned, after Mr. TRACY, had concluded his ſpeech, to the next day (Wedneſday the thirteenth) when the debate was opened by Mr. MASON of Virginia, as follows:

I feel ſome degree of embarraſſment in offering my ſentiments on a ſubject ſo fully, and ſo ably diſcuſſed. I believe that the ground taken by my friend from Kentucky, has not been ſhaken by any arguments urged in oppoſition to the reſolution on the table. Yet as ſome obſervations have been made calculated to excite ſenſibility not here, but abroad; as they appear to have been made with a view to that end; and as an alarm has been attempted to be excited on conſtitutional ground, I think the obſervations ought not to go unnoticed.

I agree with gentlemen, that it is important in a well regulated government that the judicial department ſhould be independent. But I have never been among thoſe who have carried this idea to the extent, which ſeems at this day to be faſhionable. Though of opinion that each department ought to diſcharge its proper duties free from the fear of the others, yet I have never believed that they ought to be independent of the nation itſelf. Much leſs have I believed it proper, or that our conſtitution authorizes our courts of juſtice, to control the other departments of the government.

All the departments of a popular government muſt depend on popular opinion. None can exiſt without the affections of the people, and if either be placed in ſuch a ſituation as to be independent of the nation, it will ſoon loſe that affection, which is eſſential to its durable exiſtence.

Without, however, going into an enquiry of what kind of organization is moſt fit for our tribunals, without enquiring into the fitneſs of making the judges independent for life, I am willing to enter into a conſideration, not of what ought to be, but of what is. For, whatever may be my opinion of this conſtitution, I am to reſpect it as the charter under which we are aſſembled.

When I view the proviſions of the conſtitution on this ſubject, I obſerve a clear diſtinction between the ſupreme court, and other courts. I am ſenſible, that when we come to make verbal criticiſms, any gentleman, of a ſportive imagination, may amuſe our fancies by a play upon words. But this is not the way to get rid of a genuine conſtruction of the conſtitution. With regard to the inſtitution of the ſupreme court, the words are imperative; while with regard to inferior tribunals, they are diſcretionary. The firſt *ſhall*; the laſt *may* be eſtabliſhed. And, ſurely, we are to infer from the wiſe ſages that formed that conſtitution, that nothing was introduced into it in vain. In conſtruing it, we ought to give due weight, not only to ſentences, but to words, and even to every point and comma. When, therefore, the conſtitution, uſing this language, ſays a ſupreme court *ſhall* be eſtabliſhed, are we not juſtified in conſidering it as of conſtitutional creation; and, on the other hand, from the language applied to inferior courts, are we not equally juſtified in conſidering their eſtabliſhment as dependent upon the legiſla-

ture, who *may*, from time to time, ordain them, as the public good requires. Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this ſubject than that the legiſlature ſhould have power from time to time, to create, to annul, or to modify the courts, as the public good may require—not merely to-day, but forever; and whenever a change of circumſtances may ſuggeſt the propriety of a different organization. On this point, there is great force in the remark of the gentleman from Georgia, that among the enumerated powers given to Congreſs, while there is no mention made of the ſupreme court, the power of eſtabliſhing inferior courts is expreſsly given. Why this difference, but that the ſupreme court was conſidered by the framers of the conſtitution, as eſtabliſhed by the conſtitution; while they conſidered the inferior courts as dependent upon the will of the legiſlature.

We find the phraſe, from *time to time*, in another part of the conſtitution. The 3d ſect. of the 2nd art. ſays, the Preſident ſhall, from *time to time*, give to the Congreſs information of the ſtate of the Union. That is, he ſhall, occaſionally, as he ſees fit, give ſuch information. So ſhall Congreſs occaſionally, as they ſee fit, eſtabliſh, annul, or regulate inferior courts, accordingly as the public welfare requires.

The arguments of gentlemen go upon a miſtaken principle. They expreſs the livelieſt ſympathy and

commiſeration for this *poor, this weak* department of the government. They tell us the judges have a veſted right to their offices, a right not *now* derived from the law, but from the conſtitution; and they aſſimilate their caſe to that of a public debt; to the right of a corporation; a turnpike company, or a toll bridge. But is not all this reaſoning predicated on the principle that the courts are eſtabliſhed, not for the public benefit, but for the emolument of the judges; not to promote the intereſts of the people, but to further the intereſts of the judges; not to adminiſter juſtice, but for their perſonal aggrandizement. I believe that a government ought to proceed upon different principles. It ought to eſtabliſh only thoſe inſtitutions which the good of the community requires; when that good ceaſes to need them, they ought to be put down, and of conſequence the judges ſhould hold their appointments ſo long, and no longer, than the public welfare requires.

If the arguments now urged be correct, that a court once eſtabliſhed cannot be vacated, we are led into the greateſt abſurdities. Congreſs might deem it expedient to eſtabliſh a court for particular purpoſes limited as to its objects or duration. For inſtance, the United States has taken poſſeſſion of the Miſſiſippi Territory, rightfully or not, I will not pretend to ſay. This territory has been heretofore in the hands of various maſters, viz. France, England, Spain, and Georgia; and it is now poſſeſ-

ſed by the United States. All theſe governments except the United States, made certain grants of land in the territory, and certain ſettlers ſpread their conflicting patents over the country. Theſe different titles will open a wide field for litigation, which will require able tribunals to decide upon. Suppoſe, then, Congreſs ſhould eſtabliſh ſpecial tribunals to continue for three, four, or five years, to ſettle theſe claims. Judges would be appointed. They would be the judges of an inferior court. If the conſtruction of the conſtitution now contended for, be eſtabliſhed, what would the judges ſay, when the period for which they were appointed expired? Would they not ſay we belong to inferior courts? Would they not laugh at you, when you told them their term of office was out? Would they not ſay, in the language of the gentleman from New-York, though the law that creates us is temporary, *we are in by the conſtitution?* Have we not heard this doctrine ſupported in the memorable caſe of the mandamus, lately before the ſupreme court? Was it not there ſaid that though the law had a right to eſtabliſh the office of a juſtice of the peace, yet it had not a right to abridge its duration to five years; that it was right in making the juſtices, but unconſtitutional in limiting their periods of office; that being a *judicial* officer he had a right to hold his office during life or (what is about the ſame thing) during good behaviour, in deſpite of the law which created him, and in the very act of creation, limiting his official life to five years.

I may notice another caſe, more likely to happen, to ſhew the abſurdity of this conſtruction. Congreſs have aſſumed juriſdiction over the Miſſiſippi Territory, and have eſtabliſhed a court compoſed of three judges, which court is as much an inferior court, as the circuit or diſtrict courts. Of this juriſdiction Georgia denies the validity. The conteſt is in a train of ſettlement. Suppoſe it ſhall turn out that the United States are convinced of the injuſtice of their claim, relinquiſh it, and reſtore the territory to Georgia, what becomes of the judges? Their offices, their duties, are gone! Yet they will tell you, we are veſted with certain conſtitutional rights of which you cannot deprive us. It is true, the territory is no longer yours. You have no juriſdiction, and we have no power; yet we are judges by the conſtitution. We hold our offices during good behaviour, and we will behave well as long as you will let us. Is not this a ſtrange ſituation? You have judges in a territory over which you have no juriſdiction; and you have officers which are perfect ſinecures, penſioners for life. Such an abſurdity I am ſure the conſtitution never meant to juſtify. It is an abſurdity equally repugnant to the letter and the genius of the conſtitution.

Suppoſe another caſe. Suppoſe, what I truſt will never happen, a war ſhould take place. Suppoſe that a part of the United States ſhould be conquered, and that we ſhould be compelled to cede it to a foreign nation. In this diſtrict, your juriſdiction is

gone; your power is gone; the office of a judge is deſtroyed, and yet the officer holds his appointment for life: This caſe may be conſidered as inapplicable to the United States. It may be ſaid, that we have no right to cede a ſtate, or a part of a ſtate. But I believe a different ſentiment has been entertained, and perhaps in this houſe.

But ſuppoſe this event to occur in relation to territory not attached to a ſtate. Suppoſe the government ſhould find it neceſſary to eſtabliſh an inferior court in an iſland of Lake Superior: Suppoſe it ſhould be the fortune of war to place in the poſſeſſion of the enemy, one of the ſtates; and the queſtion ſhall be, wil you give up this territory in the frozen regions of the lakes, or ſuffer the ſtate to remain in the poſſeſion of the enemy, you being unable to take it from him? If you give up the territory, your court is annihilated, yet the judges claim a tenure in their offices for life; and this in a country that no longer belongs to you—Does not ſuch a reſult ſtrike every mind as abſurd? Is it not apparent, that whatever claim ſuch men, might have upon the generoſity of the government, they can have no clain to offices that do not exiſt. Nay, further, it might upon the conſtruction now contended for, be inſiſted, that the conſtitution forbids you to make a peace upon thoſe terms; that by ceding an inconſiderable territory, which you did not want, to ſecure a whole ſtate, you would aboliſh the office of a judge, which the legiſlature had there erected; that this would be an expreſs viola-

tion of your conſtitution; and, therefore, you, muſt leave a whole ſtate in the poſſeſſion of the enemy, unleſs this judge would give you leave to make terms by reſigning his office.

I believe, ſir, that we hould not differ much, if we came to a proper underſtanding of the true principle on which this queſtion depends. If we eſtabliſh the principle, that from the nature and eſſence of public inſtitutions, they are made for the good of the people, and not for that of the individual who adminiſters them, we ſhall experience no difficulty. Gentlemen, in ſpeaking of a judge, had emphatically called it *his* office. But, it is not *his* office, but the office of the people. He is only the perſon appointed to perform certain ſervices required by the public good, and when thoſe ſervices are no longer neceſſary for that public good, his duties are at an end, his ſervices may be diſpenſed with, and he ought to retire to private life.

The caſe had been aſſimilated to a bridge. But he who builds a bridge does a public good, that entitles him to a growing renumeration for ever. But here the good is temporary. The truth is, the judge is more like the man who collects the toll, and who receives the promiſe of an annual payment, as long as he diſcharges his duties faithfully. But a flood comes, and ſweeps away the bridge; will the toll gatherer, like the judge, contend, that though the bridge is gone, and the owner ruined, that he ſhall, notwithſtanding, receive his compenſation for life,

though he cannot continue thoſe ſervices for which his annual ſtipend was to be the compenſation and reward.

But it would ſeem, that the argument urged on this occaſion, and the general courſe of our legiſlation had been grounded more on the convenience and emoluments of thoſe appointed to office, than on grounds of public utility. Firſt, we appointed ſix judges of the ſupreme court, divided the United States into three circuits, two judges to ride each circuit, in which, with the diſtrict judge, to form a court. The law fixed the duties and the compenſation, and gentlemen of the firſt character were ready to accept the places. The ſalaries indeed had been then thought high; in ſome parts of the Union they were thought enormous. But, a little time paſſed before they complained of the hardſhips of their duties; and the law was altered not ſo much for public good, as for their perſonal convenience. Where two judges were required to hold a court, one was now declared ſufficient. Thus you continued their full ſalaries, while you lopped off half their duties. Shortly after, you aſſigned them, under the penſion law, inconſiderable duties; and they refuſed to perform them. Thus, while they ſhewed themſelves ready to abate of their duties, they adhered to their ſalaries. Next came the law of laſt ſeſſion, which takes away all their duties. It leaves them ſimply a court of appeals. And what have they got to do? To try 10 ſuits; for ſuch is

the number now on their docket, as appears from a certificate juſt put into my hands; and the average number on their docket amounts to from 8 to 10. Thus, for the trial of the immenſe number of 8 or 10 ſuits, you have ſix judges, one with a ſalary of 4,000, and 5 others with ſalaries of 3,500 dollars each.

I fear, that if you take away from theſe judges, that which they ought officially to do, they will be induced from the want of employment, to do that which they ought not to do; and if they have no good to do, they may do miſchief. They may be induced, perhaps, to ſet about that work gentlemen ſeem ſo fond of. They may, as gentlemen have told us, hold the conſtitution in one hand, and the law in the other, and ſay to the departments of the government; ſo far ſhall you go, and no farther. This independence of the judiciary, ſo much deſired, will, I fear, ſir, if encouraged, or tolerated, ſoon become ſomething like ſupremacy. They will, indeed, form the main pillar of this goodly fabric; they will ſoon become the only remaining pillar, and they will preſently become ſo ſtrong, as to cruſh and abſorb all the others into their ſolid maſs.

We have been told, that no ſtate in the Union has preſumed to touch the judiciary eſtabliſhment, excepting the ſtate of Maryland. I will not anſwer for others; but with reſpect to Virginia, I will anſwer has that ſhe, to uched it. Her conſtitutional proviſion for the independence of the judges is nearly

ſimilar to that of the United States, and yet ſhe has eſtabliſhed, modified, and entirely put down particular departments of her ſyſtem.

[Here Gen. MASON went into a particulariſation of the different changes the judiciary ſyſtem of Virginia had undergone.]

After the particulariſation, Gen. MASON proceeded :—

And yet our judges, who are extremely tenacious of their rights, did not complain. They thought, as I think, that they ſhould not be removed from their offices that others might be placed in them, and that, while they did continue in office, their ſalaries ſhould be preſerved to them. And I believe the whole of our conſtitutional proviſion amounts to this : that, unlike other officers appointed by the Preſident, they ſhall not be removed by him; that their ſalaries ſhall not be diminiſhed by the legiſlature; and that, while the legiſlature may continue any particular judicial eſtabliſhment under which a judge is appointed, he ſhall hold that appointment in defiance of both the other departments of government. A judge may ſay, I am not to be turned out of office by the Preſident on the one hand, or ſtarved by the legiſlature on the other. He may ſay to the legiſlature, or the Preſident, and to both of them combined, you ſhall not turn me out of this office as long as it exiſts, to gratify your enmity to me, or your favouritiſm to another per-

ſon; ſo long as the intereſt and convenience of the people require this inſtitution, they are entitled to my ſervices, they ſhall have them, and I will be paid for them, to the utmoſt farthing, in ſpite of your diſpleaſure or caprice.

Notwithſtanding the remarks of gentlemen, I am inclined to think theſe ideas of the extreme independence of the judges, and the limited powers of the legiſlature, are not very old, but that they are of modern origin, and have grown up ſince the laſt ſeſſion of Congreſs. For, in the law paſſed laſt ſeſſion, that very law which it is now propoſed to repeal, is to be found a practical expoſition in direct hoſtility with the principle now contended for, which does not betray that ſacred regard for the office of a judge, that is, on this occaſion, profeſſed: in that very law will be found a clauſe which aboliſhes two diſtrict courts. The 24th ſection ſays, expreſsly, "The diſtrict courts of Kentucky and Tenneſſee ſhall be, and hereby are, aboliſhed." Will gentlemen tell this houſe how this expreſs proviſion came into the act of the laſt ſeſſion; and will they ſay, that though they voted for this law, yet no power exiſts in the legiſlature to aboliſh a court? It is true, that it has been ſaid, that though you put down two diſtrict courts, you promoted the officers by increaſing their ſalaries, and making them judges of the circuit courts; but the fact is, you have aboliſhed their offices; they are judges no longer of the diſtricts of Kentucky and Tenneſſee; and they

are, to every purpoſe, whatever may be their name, in reality, circuit judges. Though you have not leſſened their ſalaries, you have deprived them of their offices. However, therefore, gentlemen may calculate as to the benefit, or injury, done theſe two judges, the principle is not affected by any reſult—their offices are gone.

It is not enough to ſay, that though you deſtroyed their offices, you offered them others with higher ſalaries. You took away from them, in expreſs terms, their offices, by aboliſhing the offices. You had ſtripped them of their offices, you had robbed them of their *vested right*, and then, to make friends, offered them a compenſation; but whether the compenſation thus offered for the deprivation they had ſuffered, was really equivalent to their loſs, is a mere matter of calculation, and does not affect the conſtitutional principle. It is proper, however, to obſerve, that they were no parties to the propoſed compromiſe, and that, indeed, they had no choice left them. They were obliged to accept of what you offered them, or have nothing. If they did not agree to become judges of the newly organized circuit courts, they could not remain judges of the diſtrict courts, for theſe courts were abſolutely and completely aboliſhed.

Were I, Mr. Preſident, to make a calculation on the comparative increaſe of duties and additional ſalary, in the caſe of one of thoſe gentlemen (Judge Innes, of Kentucky) I ſhould have no heſitation to

ſay, that the bargain, which has been made without his conſent, and without his being a party to it, is a very bad one for him. Knowing, too, his particular ſituation, I am perſuaded, that if the law had left him any election between his former and new ſituation, he would have preferred remaining where he was; and, without a moment's heſitation, he would have rejected your proffered promotion, as it is called. This gentleman reſides within a few miles of Frankfort, where, as diſtrict judge of Kentucky, he held his court. Attached to domeſtic life, and enjoying all its felicities, engaged in, and pleaſed with, agricultural purſuits, he was never under the neceſſity, even during the ſeſſions of the courts, to ſleep out of his own bed one night, or to be ſeparated a ſingle day from his family. He could, every morning, give directions for the management of his farm, and return, early enough in the evening, to ſee whether his orders were executed.

How is he ſituated under the change which has been forced upon him? Inſtead of attending one court, almoſt at his door, your late law requires him to attend four—the neareſt at Bairdſtown, fifty or ſixty miles from home. You oblige him to travel, through dreary and inhoſpitable regions, to the North Weſtern Territory, ſomething ſhort of an hundred miles; and much greater diſtances to, and through, ſtill worſe countries, Knoxville, and Naſhville, in Tenneſſee. In going from one to the

other of thoſe laſt mentioned places, he will have to paſs through the country of the Cherokee Indians, nearly one hundred miles over the Cumberland mountains, where he will be expoſed to every inclemency of the weather, without a ſhelter to retire to, for there is not a houſe, or a hut, in the whole journey; a journey, in which all travellers are obliged, at all times, and of unavoidable neceſſity, to ſleep *one* night at leaſt, and from the fall of rains, and riſe of water courſes, often many nights, without a roof to cover them from the beating of the ſtorm; and, moreover, where they are liable, at every ſtep, to be robbed by the Indians, as I myſelf experienced paſſing through that wilderneſs. Can it be ſuppoſed, that the five hundred dollars, added to the ſalary of Judge Innes, ſhould, by a perſon ſituated as he was, be deemed a ſufficient compenſation for the additional duties, the toils, the dangers, and the deprivations, to which that law ſubjected him. In continuing to ſerve his country, I am ſure he muſt have been influenced more by a ſenſe of duty than a regard to private intereſt; or a belief, that the change was, in any reſpect, advantageous to him.

By the 7th ſection, of the law of the laſt ſeſſion, which transforms the diſtrict into circuit courts, which melts down the judges and recoins them, it is enacted, That there ſhall be a circuit court, compoſed of one new circuit judge and two old diſtrict judges, to be called the ſixth circuit. Have you

ced at the laſt ſeſſion. What temper accompanied the progreſs of the bill, in the other houſe, I know not, or, if I did know, would it be proper for me here to ſay. But, with reſpect to the acts of this body, I am not of opinion, that they added any dignity to our common courſe of procedure. The bill was referred to a committee, who, though it was very long, reported it without any amendment. Various amendments were offered, ſome of which were admitted to be proper. But they were not received. One, indeed, propoſed by a member from Connecticut, who was chairman of the committee, and was then hoſtile to the plan, did paſs, in the early ſtages of the bill; but, on the third reading, it was expunged, All amendments, propoſed by the minority, were uniformly rejected, by a ſteady, inflexible, and undeviating majority. I confeſs, that I ſaw no paſſion, but I certainly did ſee great pertinacity; ſomething like what the gentleman, from Connecticut, had termed *a holding faſt.* No amendments were admitted; when offered, we were told, No, you may get them introduced by a rider, or ſupplementary bill, or in any other way you pleaſe; but down this bill muſt go; it muſt be crammed down your throats. This was not the preciſe phraſe; but ſuch was the amount of what was ſaid.

I will ſay, that not an argument was urged in favour of the bill, not a word to ſhew the neceſſity or propriety of the change. Yet, we are told, that

there was great dignity, great ſolemnity, in its progreſs and paſſage!

But there is ſomething undignified in thus haſtily repealing this law! in thus yielding ourſelves to the fluctuations of public opinion! So we are told. But if there be blame, on whom does it fall? Not on us who reſpected the public opinion when this law was paſſed, and who ſtill reſpect it. But on thoſe, who, in defiance of public opinion, paſſed this law, after that public opinion had been deciſively expreſſed. The revolution in public opinion had taken place before the introduction of this project; the people of the United States had determined to commit their affairs to new agents; already had the confidence of the people been transferred from their then rulers, into other hands. After this expoſition of the national will, and this new depoſit of the national confidence, the gentlemen ſhould have left untouched, this important and delicate ſubject; a ſubject on which the people could not be reconciled to their views, even in the flood-tide of their power and influence; they ſhould have forborne, till agents, better acquainted with the national will, becauſe more recently conſtituted its organs, had come into the government. This would have been more dignified than to ſeize the critical moment, when power was paſſing from them, to paſs ſuch a law as this. If there is error, it is our duty to correct it; and the truth was, no law was ever more execrated by the public.

Let it not be ſaid, poſtpone the repeal till the next ſeſſion. No. Let us reſtore thoſe gentlemen to private life, who have accepted appointments under this law. This will be doing them greater juſtice, than by keeping them in office another year, till the profeſſional buſineſs, which once attached to them, is gone into other channels.

[Mr. MASON went into an examination of the number of ſuits depending at the time the law was paſſed, and particularly the number brought within the twelve months preceding its paſſage, from the fewneſs of which, and their being in a ſtate of diminution, rather than increaſe, he inferred the inutility of the additional judges.]

He continued: If, on this review, we find the number of ſuits decreaſing, inſtead of increaſing; if the courts, then eſtabliſhed, were found competent to the prompt and faithful diſcharge of all the duties devolved upon them, the law was unneceſſary; and if neceſſary, the additional expenſe incurred by it was unneceſſary, and all unneceſſary expenſe ſhould be ſaved. It is true, that 50,000 dollars, divided among the people of the United States, amounted to but one cent a man; but the principle was ſtill the ſame. It has been very faſhionable, of late, to juſtify every unneceſſary expenſe by ſtating each item by itſelf, and dividing it among the whole people. In this way every expenſe is held forth as of little conſequence. Gentlemen ſay, in this caſe, it is only one cent a man. In the caſe of the mauſoleum, two hundred thouſand dollars came to only four cents a man! In

the direct tax, it is only forty cents! They talk of our army, it only comes to a few cents for each perſon, who may ſell as many cabbages to the ſoldiers themſelves, as to pay it! So in a navy. In this way are the moſt extravagant expenſes whittled down to a mere fraction. But this kind of federal arithmetic I can never accede to. It may ſuit an expenſive government, but it is an impoſition upon the people.

It has been urged, with ſome force, by the gentlemen from New-York and Connecticut, that the ſmall number of ſuits is an evidence of the efficacy and ability of our courts of juſtice. I am willing to admit the force of this remark; but I muſt apply it very differently from thoſe gentlemen. I muſt apply it to the ſtate of the dockets, when this law paſſed; and, from their being very few at the time, I muſt infer, that the ſyſtem exiſting then was an excellent one, as it wielded the power of the law ſo effectually, that there was but little neceſſity for enforcing the law againſt delinquents.

From the remarks, made by the gentleman from Connecticut, it might be inferred, that we were about to deſtroy all our courts, and that we were, in future, to have no courts. Is this the caſe? Are we contending for breaking down the whole judiciary eſtabliſhment? On the contrary, we barely ſay, the courts you had, before the paſſage of this law, were ſufficient; return, therefore, to them. This law, which we wiſh repealed, im-

parts no new authorities to your judges; it clothes them with no additional terrors; it adds not to their axes, or increaſes not the number of their rods. It only enlarges their number, which was before large enough.

The gentleman from New-York has amuſed himſelf with a great deal of handſome rhetoric. But, I apprehend, without bearing much upon the queſtion. There is one idea, however, which he has ſeized with extacy, the idea of a great ſtate kneeling at the altar of federal power; and he deplores that this ſpectacle, the moſt ſublime that his imagination can conceive, is vaniſhed forever. But, if he will conſult thoſe ſtores of hiſtory with which he ſo often amuſes and inſtructs his audience, he will find ſtill more ſplendid humiliations. He will find the proud monarchs of the eaſt, ſurrounded with all the decorations of royalty, dragged at the chariot-wheel of the conqueror. In more modern times, he will behold a king of England, and of France, one holding the ſtirrup, and the other the bridle, while the Pope mounted his horſe. If not contented with the contemplation of theſe illuſtrious degradations, he may reſort to ſacred writ, to which he ſo often appeals; and, in the very book of judges, he will behold a famous king of Jeruſalem, ſurrounded by three-ſcore and ten dependent kings, picking up the crumbs from under his table; and what made the humiliation more charming, all theſe kings had their thumbs and great toes cut off,

But, if the gentleman from New-York wiſhes to be gratified with a more modern idea of ſovereign degradation, I would refer him to the memorable threat of an individual, *a ſervant of the people*, to humble a whole ſtate, a great ſtate too, *in duſt and aſhes*. A ſtate upon her knees, before ſix venerable judges, decorated in party-coloured robes, as ours formerly were, or arrayed in more ſolemn black, ſuch as that they have lately aſſumed, hoping, though a ſtate, that it might have ſome chance for juſtice, exhibits a ſpectacle of humble and degraded ſovereignty far ſhort of the dreadful denunciation, to which I allude! If the gentleman feels, as I know many do, rapture at the idea of a ſtate being humiliated and tumbled into the duſt, I envy him not his feelings. At ſuch a thought, I acknowledge, I feel humbled. If the degradation were confined to kings and tyrants, to uſurpers, who had deſtroyed the liberties of nations, I ſhould not feel much commiſeration; but when applied to governments, inſtituted by the people for the protection of their liberties, and adminiſtered only to promote their happineſs, I feel indignant at the idea of degraded ſovereignty. I ſhould feel the ſame intereſt for any ſtate, large or ſmall, whether it were the little ſtate of Delaware herſelf, or the ſtill more inſignificant republic of St. Marino.

Mr. STONE, of North Carolina. The importance of the preſent queſtion, might, I preſume, juſtify any member in delivering his ſentiments

without apology. But, from the able manner in which the ſubject has already been diſcuſſed, I ſhould have been induced to adhere to my uſual courſe, ſince I have been a member of this body, and leaving its elucidation to others of greater experience and more talents, have been contented with a ſilent vote. As, however, the ſtate, whoſe ſervant I am, and whoſe faithful ſervant I wiſh at all times to be found, has inſtructed her members on this ſubject, I will endeavour, in the plain way of which alone I am capable, ſo aſſign the reaſons for my vote. And, in doing this, I rather wiſh than hope, that I may ſtate any thing worthy the conſideration of this enlightened aſſembly.

The argument upon this queſtion, has naturally divided into two parts, the one of expediency, the other of conſtitutionality. If the repeal of this law ſhall be deemed expedient, the Senate will, doubtleſs, conſider it their duty to repeal it, if no conſtitutional objection oppoſes it; but if it ſhall be deemed unconſtitutional to repeal it, then no conſiderations of expediency can ſtand in the way of that ſolemn inſtrument, we are all ſworn to ſupport.

Before entering into an examination of the expediency of the repeal, it may be proper to remark, that gentlemen, who have ſpoken againſt the repeal, whoſe talents and eloquence I highly admire, have not correctly ſtated the queſtion. The true queſtion is, not whether we ſhall deprive the people of

the United States of all their courts of juſtice; but whether we ſhall reſtore to them their former courts? Shall we, or ſhall we not, continue an experiment made, or attempted to be made, I will not ſay, improperly, becauſe my reſpect for this body, and for my country, forbid the imputation; but I will ſay, that the length of time we remained without this ſyſtem, and the repeated ineffectual attempts made to eſtabliſh it, preſent ſtrong reaſons for inferring, that there are not thoſe great apparent reaſons in favour of it, that have been ſtated. A ſyſtem, ſomewhat ſimilar to the preſent, had been rejected by the legiſlature, becauſe they preferred the former ſyſtem. Another evidence, to the ſame purport, is, that during the laſt ſeſſion, when the ſubject was again revived, and the preſent plan adopted, an amendment was offered, to amend by extending and enlarging the former eſtabliſhment.

[Here Mr. STONE read the amendment propoſed, which augmented the number of judges of the ſupreme court, and aſſigned their circuits.]

This amendment was rejected, and, from the vote entered on the journal of that day, it appears, that the difference of votes againſt the amendment, was formed of thoſe gentlemen who were nominated to appointments made vacant by the promotions under the new law. I do not ſtate this circumſtance as an evidence that theſe gentlemen were influenced by improper motives; but to ſhew, that the manner in which the new ſyſtem was formed, was

not calculated to eſtabliſh, in the public mind, a decided preference of it over the old ſyſtem.

Having made theſe remarks on the great deliberation ſaid to have been manifeſted in the adoption of this plan, I hope I may be permitted to expreſs my perfect coincidence with the gentleman from Connecticut, that courts are neceſſary for the adminiſtration of juſtice, and that, without them, our laws would be a dead letter.

But it appears to me eſſential to the due adminiſtration of juſtice, that thoſe who preſide in our courts ſhould be well acquainted with the laws which are to guide their deciſions. And, I apprehend, that no way is ſo much calculated to impart this knowledge, as a practical acquaintance with them, by attending courts in the ſeveral ſtates, and hearing gentlemen who are particularly acquainted with them, explain and diſcuſs them. It is, therefore, abſolutely neceſſary, in my mind, that the judges of the ſupreme court, whoſe power controls all the other tribunals, and on whoſe deciſions reſt the property, the reputation, the liberty, and the lives of our citizens, ſhould, by riding the circuits, render themſelves practically acquainted with their duties. It is well known, that the knowledge of the laws of a ſtate is not to be ſuddenly acquired, and it is reaſonable to conclude, that that knowledge is moſt correctly poſſeſſed by men whoſe whole lives have been devoted to the acquiſion. It is alſo perfectly well known, that the knowledge of the modes and

and principles of practice in the different ſtates, or of any ſtate, is moſt effectually to be acquired in courts, where gentlemen of ſkill and experience apply thoſe principles to uſe upon exiſting points.

This defect, then, of the preſent plan, is, in my opinion, ſo radical, that, of itſelf, it would decide, with me, the queſtion of expediency.

With regard to the expenſe of this new ſyſtem, I will ſay, that it weighs as much as it is worth. The ſingle conſideration of an expenditure of thirty thouſand dollars, may not be deemed of much importance, when weighed with the benefits derived from an adminiſtration of juſtice over this extenſive country. If this great object can be better effected with the additional expenſe, then it is proper to conſider whether the amelioration is worth the price; but if it is not better effected, it ſurely cannot be the wiſh of any gentleman to incur a uſeleſs expenſe. If, when this law paſſed, the buſineſs, to the tranſaction of which the old courts were fully competent, was leſſening, then, ſurely, there was no occaſion for additional tribunals.

The more important conſideration involves the conſtitutional queſtion: Can we, according to that ſacred inſtrument, repeal this law, and deſtroy the offices created by it? If we cannot, I hope the Senate will reject the propoſition on your table. But if we can, as, on examination I think we may, I truſt the reſolution will be adopted.

The gentleman from Kentucky, who introduced this ſubject, has ſo fully and forcibly ſtated that part of the argument, which eſtabliſhes that the office of judge, being declared, by the conſtitution, to be during good behaviour, muſt evidently apply to exiſting offices, and not to conteſt the power of the legiſlature in doing away offices, that I ſhall not touch it.

I have taken a view of the conſtitution, which, though new in this argument, appears, to me, to be correct and concluſive. The fourth ſection, of the ſecond article of the conſtitution, declares, "That the Preſident, the Vice-Preſident, and all civil officers of the United States, ſhall be removed from office, on impeachment for, and conviction of, treaſon, bribery, or other high crimes and miſdemeanors."

This ſection, being added to the article eſtabliſhing the executive power, evidently operates as a reſtriction and curb to that power; to prevent the Preſident, Vice-Preſident, or any officer in the appoint of the Preſident, from remaining in office, when, in the opinion of the legiſlature, the public good requires them to be diſplaced. The practical conſtruction put upon this article, in connection with other parts of the conſtitution, is, that all officers, in the appointment of the Preſident, *may* be removed at his will; but that thoſe officers, together with himſelf, and Vice-Preſident, *ſhall* be removed, upon impeachment and conviction, by the

legiſlature. No part of the conſtitution expreſsly gives the power of removal to the Preſident; but a conſtruction has been adopted and practiſed upon from neceſſity, giving him that power in all caſes in which he is not expreſsly reſtrained from the exercise of it. The judges afford an inſtance, in which he is expreſsly reſtrained from removal. It being declared, by the firſt ſection of the third article of the conſtitution, that the judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour. They doubtleſs ſhall, (as againſt the Preſident's power to retain them in office), in common with other officers of his appointment, be removed from office by impeachment and conviction; but it does not follow, that they may not be removed by other means. They ſhall hold their offices during good behaviour, and they ſhall be removed from office upon impeachment and conviction of treaſon, bribery, and other high crimes and miſdemeanors.

To what ſource, then, ſhall we reſort, for a knowledge of what conſtitutes this thing, called miſbehaviour in office? The conſtitution, ſurely, did not intend, that a circumſtance ſo important as the tenure by which the judges hold their offices, ſhould be incapable of being aſcertained. *Their misbehaviour* certainly is not an impeachable offence; ſtill it is the ground upon which the judges are to be removed from office. The proceſs of impeachment, therefore, cannot be the only one by which the

judges may be removed from office, under, and according to the conſtitution. I take it, therefore, to be a thing undeniable, that there reſides ſomewhere in the government, a power to declare what ſhall amount to miſbehaviour in office, by the judges, and to remove them from office for the ſame, without impeachment. The conſtitution does not prohibit their removal by the legiſlature, who have the power to make all laws neceſſary and proper for carrying into execution the powers veſted by the conſtitution in the government of the United States. But, ſays the gentleman from New-York, the judges are officers, inſtituted by the conſtitution, to ſave the people from their greateſt enemies, themſelves; and, therefore, they ſhould be entirely independent of, and beyond the control of the legiſlature. If ſuch was the deſign of thoſe wiſe men who framed and adopted the conſtitution, can it be preſumed, they would have provided ſo ineffectual a barrier as theſe judges can readily be ſhewn to be? It is allowed, on all hands, the legiſlature may modify the courts; they may add judges, they may fix the times at which the courts ſhall ſit, &c. Suppoſe the legiſlature to have intereſts diſtinct from the people, and the judges to ſtand in the way of executing any favourite meaſure—Can any thing be more eaſy than for the legiſlature to declare, that the courts, inſtead of being held ſemi-annually, or oftener, ſhall be held only once in ſix, eight, ten, or twenty years; or, in order to free themſelves from the op-

poſition of the preſent ſupreme court, to declare, that court ſhall hereafter be held by thirteen judges. An underſtanding between the Preſident and the Senate, would make it practicable, to fill the new offices with men of different views and opinions from thoſe now in office. And what, in either caſe, would become of this boaſted protection of the people, againſt themſelves. I cannot conceive the conſtitution intended ſo feeble a barrier; a barrier ſo eaſily evaded.

What danger is there to the people from the legiſlature which the courts can control? The means of oppreſſion neareſt at hand to the legiſlature, and which afford the ſtrongeſt temptation to their uſe, are, the raiſing extravagant and unneceſſary ſums of money, and the embodying large and uſeleſs armies. Can the courts oppoſe effectual checks to theſe powers? I preſume not. The conſtitution permits their exerciſe to any extent within the diſcretion of the legiſlature.

The objects of courts of law, as I underſtand them, are, to ſettle queſtions of right between ſuitors; to enforce obedience to the laws, and to protect the citizens againſt the oppreſſive uſe of power in the executive offices. Not to protect them againſt the legiſlature; for that, I think, I have ſhewn to be impoſſible, with the powers which the legiſlature may ſafely uſe and exerciſe; and becauſe the people have retained, in their own hands, the power of controlling and directing the legiſlature, by their

immediate and mediate elections of President, Senate, and House of Representatives.

It is not alone the sixteen rank and file which the gentleman from New-York has so ludicrously depicted, that I apprehend immediate danger from, but it is the principle, which converts the office of judge into an hospital of incurables, and declares, that an expiring faction, after having lost the public confidence, may add to those sixteen, until they become 16,00, or 16,000; and that the restored good sense of the legislature, the whole government and constitution, retains no means of casting them off, but by destroying itself, and resorting to revolutionary principles. The legislature may repeal unnecessary taxes, may disband useless and expensive armies, may declare they will no longer be bound by the stipulations of an oppressive treaty; and, if war should follow, the constitution is still safe. But if the construction, which gentlemen contend for, be correct, a band of drones, to any amount, in number, under the denomination of judges, may prey upon the substance of the people, and the government retains not the power to remove them, but by destroying the constitution.

I beseech this enlightened assembly to pause, before they adopt a construction capable of producing so great mischief, and so ineffectual to the ends proposed.

The question is not now, as it would seem from the arguments of gentlemen, they understand it to

be; whether we ſhall aboliſh offices without compenſating the officers for the ſacrifices they may have made. If a propoſal to compenſate them ſhall be brought forward, the legiſlature will ſurely do what honour and juſtice ſhall require.

If I poſſeſſed equal powers of ſpeech with the gentleman from Connecticut, I might be tempted to make as impreſſive an addreſs to the feelings of the Senate. Sure I am, I feel as deep an intereſt in, and ſolicitude for, the conſtitution, as that gentleman. I view it, with him, as the bond of our union, and the foundation of our ſafety. But it muſt be ſupported on reaſonable and practical grounds. My underſtanding is incapable of ſeeing how the abſurdities and evils of the conſtruction, contended for, can be avoided. I hope, therefore, that the power of the legiſlature, to put down, as well as to build up, courts of juſtice, as the public good may require, will be eſtabliſhed.

Not having accuſtomed myſelf to deliver my ſentiments in this or the other branch of the legiſlature, I may not have compriſed them in ſo ſhort a compaſs, nor in ſuch orderly ſhape, as would be proper in ſubmitting them to this enlightened aſſembly. If, however, I have ſucceeded in ſtating intelligibly the grounds of my conviction, I am ſatisfied. If my remarks have contributed to elucidate the ſubject to others, I ſhall rejoice; but if failing in this, they alſo are mixed with error, I truſt gentlemen will ſet them right.

After Mr. STONE concluded, the Senate adjourned till the next day (Thurſday the fourteenth) when Mr. OLCOTT, of New-Hampſhire, opened the debate.

He ſaid, this ſubject was of the moſt important kind, and though many able arguments had been already offered, he could not paſs it over with a ſilent vote.

It has been ſuggeſted that the act, now propoſed to be repealed, came in on the influx of paſſion, and that the influx of reaſon ſhould ſweep it away. He did not know that this was the caſe. Some gentlemen contend that it was adopted with great deliberation.

He thought the reaſons for a repeal of this law inſufficient. It is not ſaid, that if the conſtitution veſts a right to office in the judges, that we can affect them. He thought the conſtitution did veſt the right, and he held it to be ſacred.

The proviſions of the conſtitution appeared to him ſo plain, that they ſcarcely admitted of illuſtration. He who undertakes to explain the text muſt find more explicit terms than thoſe contained in it. He could not find any.

After dwelling upon the different proviſions of the conſtitution, Mr. OLCOTT went upon the queſtion of expediency, at ſome length, and concluded that a repeal was as inexpedient as unconſtitutional.

Mr. COCKE, of Tenneſſee, followed Mr. OLCOTT. He ſaid, he was ſorry gentlemen attempt-

ed to make quack doctors of them, by saying we may give a wound, but cannot heal it. He wished the Senate to inquire whether the law now proposed to be repealed, was constitutional or not. If it was not, we should act like honest men, acknowledge that we have violated the constitution, and restore it to its purity by repealing the law. Let us recur to the Journals of 1799, and see what was the understanding of these champions of our liberties, and whether they have not since changed. The Journals would prove that the judges were to mix with the legislature, were to be locked up in a closet, and to declare, who was to be our executive magistrate.

[Mr. COCKE, went into an examination of the arguments on the constitutional point.]

We have been told, that the nation is to look up to these immaculate judges, to protect their liberties, to protect the people against themselves. This was novel, and what result did it lead to? He shuddered to think of it. Were there none of these judges ready to plunge their swords in the American heart; He did not think it proper to be alarmed, by the terrors held out. He wished to know no man; to take things as they are. But if gentlemen will attack, they must expect a reply.

Mr. COCKE, then dilated upon the several points of the discussion, and concluded with the expression of the hope that the legislature would repeal the law, and that they would not give way to the ideas of

gentlemen, that the government, was made for a choſen few, for the judges, to whom we are to look up for every thing.

After Mr. COCKE ſat down, there was a pauſe, and the queſtion was called for. When it was about to be put, Mr. MORRIS again roſe:

Mr. Preſident, I had foſtered the hope that ſome gentleman who thinks with me, would have taken upon himſelf the taſk of replying to the obſervations made yeſterday, and this morning, in favour of the motion on your table. But ſince no gentleman has gone ſo fully into the ſubject as it ſeems to require, I am compelled to requeſt your attention.

We were told yeſterday by the honourable member from Virginia, that our objections were calculated for the bye-ſtanders, and made with a view to produce effect upon the people at large. I know not for whom this charge is intended. I certainly recollect no ſuch obſervations. As I was perſonally charged with making a play upon words, it may have been intended for me. But ſurely, ſir, it will be recollected that I declined that paltry game, and declared that I conſidered the verbal criticiſm which had been relied on, as irrelevant. If I can recollect what I ſaid, from recollecting well what I thought, and meant to ſay, ſure I am, that I uttered nothing in the ſtyle of an appeal to the people. I hope no member of this houſe has ſo poor a ſenſe of its dignity, as to make ſuch an appeal. As to myſelf, it

is now near thirty years ſince I was called into public office. During that period, I have frequently been the ſervant of the people, always their friend; but at no one moment of my life, their flatterer, and God forbid, that I ever ſhould be. When the honourable gentleman conſiders the courſe we have taken, he muſt ſee that the obſervation he has thus pointed, can light on no object. I truſt, that it did not flow from a conſciouſneſs of his own intentions. He, I hope, had no view of this ſort. If he had, he was much, very much miſtaken. Had he looked round upon thoſe, who honour us with their attendance, he would have ſeen that the ſplendid flaſhes of his wit, excited no approbatory ſmile. The countenances of thoſe by whom we were ſurrounded, preſented a different ſpectacle. They were impreſſed with the dignity of this houſe; they perceived in it the dignity of the American people, and felt with high and manly ſentiment, their own participation.

We have been told, ſir, by the honourable gentleman from Virginia, that there is no independent part of this government. That in popular governments, the force of every department, as well as the government itſelf, muſt depend upon popular opinion. And the honourable member from North-Carolina, has informed us, that there is no check for the overbearing powers of the legiſlature, but public opinion; and he has been pleaſed to notice a ſentiment I had uttered. A ſentiment which not only

fell from my lips, but which flowed from my heart. It has, however, been *misunderstood*, and *misapplied*. After reminding the houſe of the dangers to which popular governments are expoſed, from the influence of deſigning demagogues upon popular paſſion, I took the liberty to ſay, that *we*, we the Senate of the United States, are aſſembled here, to ſave the people, from their moſt *dangerous* enemy, to ſave them from themſelves; to guard them againſt the baneful effects of their own precipitation, their paſſion, their miſguided zeal. 'Tis for theſe purpoſes that all our conſtitutional checks are deviſed. If this be not the language of the conſtitution, the conſtitution is all nonſenſe. For why are the ſenators choſen by communities, and repreſentatives directly by the people? Why are the one choſen for a longer term than the other? Why give one branch of the legiſlature a negative upon the acts of the other? Why give the Preſident a right to arreſt the proceedings of both, till two-thirds of each ſhould concur? Why all theſe multiplied precautions, unleſs to check and control that impetuous ſpirit, that headlong torrent of opinion, which has ſwept away every popular government that ever exiſted?

With moſt reſpectful attention, I heard the declaration of the gentleman from Virginia, of his own ſentiment. "Whatever," ſaid he, "may be my opinion of the conſtitution, I hold myſelf bound to reſpect it." He diſdained, ſir, to profeſs an affect-

tion he did not feel, and I accept his candour as a pledge for the performance of his duty. But he will admit this neceſſary inference from that frank confeſſion, that although he will ſtruggle (againſt his inclination) to ſupport the conſtitution, even to the laſt moment, yet, when, in ſpite of all his efforts, it ſhall fall, he will rejoice in its deſtruction. Far different are my feelings. It is poſſible, that we are both prejudiced; and that in taking the ground on which we reſpectively ſtand, our judgments are influenced by the ſentiments which glow in our hearts. I, ſir, wiſh to ſupport this conſtitution, becauſe I love it. And I love it, becauſe I conſider it as the bond of our union; becauſe, in my ſoul, I believe, that on it depends our harmony, and our peace; that without it, we ſhould ſoon be plunged in all the horrors of civil war; that this country would be deluged with the blood of its inhabitants; and a brother's hand, be raiſed againſt the boſom of a brother.

After theſe preliminary remarks, I hope I ſhall be indulged, while I conſider the ſubject, in reference to the two points which have been taken, the *expediency* and the *conſtitutionality* of the repeal.

In conſidering the *expediency*, I hope I ſhall be pardoned, for aſking your attention to ſome parts of the conſtitution, which have not yet been dwelt upon, and which tend to elucidate this part of our inquiry. I agree fully with the gentleman, that

every ſection, every ſentence, and every word of the conſtitution, ought to be deliberately weighed and examined; nay, I am content to go along with him, and give its due value and importance, to every ſtop, and comma. In the beginning we find a declaration of the motives which induced the American people to bind themſelves by this compact. And in the fore-ground of that declaration, we find theſe objects ſpecified; *to form a more perfect union, to eſtabliſh juſtice, and to inſure domeſtic tranquillity.* But how are theſe objects effected? The people intended *to eſtabliſh juſtice.* What proviſion have they made to fulfil that intention? After pointing out the courts which ſhould be eſtabliſhed, the 2d ſection of the 3d article informs us, "The judicial power ſhall extend to all caſes, in law and equity, ariſing under this conſtitution, the laws of the United States, and treaties made, or which ſhall be made, under their authority; to all caſes affecting ambaſſadors, other public miniſters and conſuls; to all caſes of admiralty and maritime juriſdiction; to controverſies to which the United States ſhall be a party; to controverſies between two or more ſtates, between a ſtate and citizens of another ſtate, between citizens of different ſtates, between citizens of the ſame ſtate, claiming lands under grants of different ſtates, and between a ſtate, or the citizens thereof, and foreign ſtates, citizens or ſubjects.

" In all caſes, affecting ambaſſadors, other public miniſters and conſuls, and thoſe in which a ſtate ſhall be a party, the ſupreme court ſhall have original juriſdiction. In all the other caſes before-mentioned, the ſupreme court ſhall have appellate juriſdiction, both as to law and fact, with ſuch exceptions, and under ſuch regulations as the Congreſs ſhall make."

Thus, then we find that the judicial power, *ſhall* extend to a great variety of caſes, but that the ſupreme court ſhall have only *appellate* juriſdiction in all admiralty, and maritime cauſes, in all controverſies between the United States and private citizens, between citizens of different ſtates, between citizens of the ſame ſtate, claiming lands under different ſtates, and between a citizen of the United States and foreign ſtates, citizens or ſubjects. The honourable gentleman from Kentucky, who made the motion on your table, has told us, that the conſtitution in its judiciary proviſions, contemplated only thoſe caſes which could *not* be tried in the ſtate courts. But he will, I hope, pardon me, when I contend that the conſtitution did not merely contemplate, but did by expreſs words, reſerve to the national tribunals a right to decide, and did ſecure to the citizens of America, a right to demand their deciſion in many caſes evidently cognizable in the ſtate courts. And what are theſe caſes? They are thoſe in reſpect to which it is by the conſtitution preſumed, that the ſtate courts would not always

make a cool and calm inveſtigation, a fair and juſt deciſion. *To form*, therefore, *a more perfect union*, and *to insure domestic tranquillity*, the conſtitution has ſaid, there ſhall be courts of the Union to try cauſes, by the wrongful deciſion of which the Union might be endangered, or domeſtic tranquillity be diſturbed. And what courts? Look again at the caſes deſignated. The ſupreme court has no *original* juriſdiction. The conſtitution has ſaid, that the judicial powers ſhall be veſted in the *supreme* and *inferior* courts. It has declared that the judicial powers ſo veſted ſhall extend to the caſes mentioned, and that the ſupreme court ſhall *not* have *original* juriſdiction in thoſe caſes. Evidently, therefore, it has declared that they ſhall (in the firſt inſtance) be tried by *inferior* courts, with appeal to the *supreme* court. This, therefore, amounts to a declaration that the *inferior* courts *shall* exiſt. Since without them, the citizen is deprived of thoſe rights for which he ſtipulated, or rather thoſe rights *verbally* granted, would be *actually* withheld; and that great ſecurity of our Union, that neceſſary guard of our tranquillity, be completely paralized, if not deſtroyed. In declaring then, that theſe tribunals *shall exist*, it equally declares, that the Congreſs *shall* ordain and eſtabliſh them. I ſay they *shall;* this is the evident intention, if not the expreſs words, of the conſtitution. The convention in framing, the American people in adopting, that compact, did not, could not preſume, that the Con-

greſs would omit to do, what they were thus bound to do. They could not preſume, that the legiſlature would heſitate one moment, in eſtabliſhing the organs neceſſary to carry into effect thoſe wholeſome, thoſe important proviſions.

The honourable member from Virginia, has given us a hiſtory of the judicial ſyſtem, and in the courſe of it, has told us, that the judges of the ſupreme court knew, when they accepted their offices, the duties they were to perform, and the ſalaries they were to receive. He thence infers, that if again called on, to do the ſame duties, they have no right to complain. Agreed. But that is not the queſtion between us. Admitting that they have made a hard bargain, and that we may hold them to a ſtrict performance, is it wiſe to exact their compliance to the injury of our conſtituents? We are urged to go back to the old ſyſtem; but let us firſt examine the effects of that ſyſtem. The judges of the ſupreme court rode the circuits, and two of them with the aſſiſtance of a diſtrict judge, held circuit courts, and tried cauſes. *As a supreme court* they have in moſt caſes only an appellate juriſdiction. In the firſt inſtance, therefore, they tried a cauſe ſitting *as an inferior court*, and, then on appeal, tried it over again *as a supreme court*. Thus then, the appeal was from the ſentence of the judges, to the judges themſelves. But ſay, that to avoid this impropriety, you will incapacitate the two judges, who ſat on the circuit, from ſitting in the ſupreme court,

to review their own decrees. Strike them off: and ſuppoſe, either the ſame, or a contrary deciſion to have been made on another circuit, by two of their brethren in a ſimilar caſe. For the ſame reaſon you ſtrike *them* off, and then you have no court left. Is this wiſe? Is it ſafe? You place yourſelf in a ſituation, where your citizens muſt be deprived of the advantage given to them of a court of appeals, or elſe run the greateſt riſk that the deciſion of the firſt court will carry with it that of the others.

The ſame honourable member, has given us a hiſtory of the law paſſed the laſt ſeſſion, which he wiſhes now to repeal. That hiſtory is accurate at leaſt in one important part of it. I believe, that all amendments were rejected, *pertinaciously* rejected: and I acknowledge, that I joined heartily in that rejection. It was for the cleareſt reaſon on earth. We all perfectly underſtood, that to *amend* the bill, was to *destroy* it. That if ever it got back to the other Houſe, it would periſh. Thoſe, therefore, who approved of the general proviſions of that bill, were determined to adopt it. We ſought the practicable good, and would not, in purſuit of unattainable perfection, ſacrifice that good to the pride of opinion. We took the bill, therefore, with its imperfections, convinced that when it was once paſſed into a law, it might be eaſily amended.

We are now told, that this procedure was improper; nay, that it was *indecent*. That *public*

*opinion* had declared itſelf againſt us. That a majority (holding different opinions) was *already chosen* to the other houſe; and that a ſimilar majority *was expected* for that in which we ſit. Mr. Preſident, are we then to underſtand, that oppoſition to the majority in the two houſes of Congreſs is *improper*, is *indecent?* If ſo—what are we to think of thoſe gentlemen, who not only with proper and decent, but with laudable motives, (for ſuch is their claim) ſo long, ſo perſeveringly, ſo pertinaciouſly, oppoſed that voice of the people, which had ſo repeatedly, and for ſo many years, declared itſelf againſt them, through the organ of their repreſentatives? Was this indecent in them? If not, how could it be improper for us to ſeize the only moment which was left for the then majority to do what they deemed a neceſſary act? Let me again refer to thoſe imperious demands of the conſtitution, which called on us to eſtabliſh inferior courts. Let me remind gentlemen of their aſſertion on this floor, that centuries might elapſe before any judicial ſyſtem could be eſtabliſhed with general conſent. And then let me aſk, being thus impreſſed with a ſenſe of the duty, and the difficulty of performing that arduous taſk, was it not wiſe to ſeize the auſpicious moment?

Among the many ſtigmas affixed to this law, we have been told that the Preſident, in ſelecting men to fill the offices which it created, made vacancies and filled them from the floor of this houſe.

And that, but for the influence of this circumſtance, a majority in favour of it could not have been found. Let us examine this ſuggeſtion. It is grounded on the ſuppoſition of corrupt influence derived from a hope, founded on two remote, and ſucceſſive contingencies. Firſt, the vacancy might, or might not exiſt; for it depended as well on the acceptance of another, as on the Preſident's grant; and Secondly, the Preſident might, or might not fill it with a member of this Houſe. Yet on this vague conjecture, on this unſtable ground, it is inferred, that men in high confidence, violated their duty. It is hard to determine the influence of ſelf-intereſt on the heart of man. I ſhall not, therefore, make the attempt. In the preſent caſe it is poſſible, that the imputation may be juſt; but I hope not, I believe not. At any rate gentlemen will agree with me, that the calculation is uncertain and the conjecture vague.

But let it now, for argument ſake, be admitted, ſaving always the reputation of honourable men, who are not here to defend themſelves. Let it, I ſay, for argument ſake be admitted, that the gentlemen alluded to, acted under the influence of improper motives. What then? Is a law, that has received the varied aſſent required by the conſtitution, and is cloathed with all the needful formalities, thereby invalidated? Can you impair its force by impeaching the motives of any member who voted for it? Does it follow, that a law is bad be-

cauſe all thoſe who concurred in it, cannot give good reaſons for their votes? Is it not before us? Muſt we not judge of it by its intrinſic merit? Is it a fair argument, addreſſed to our underſtanding, to ſay we muſt repeal a law, even a good one, if the enacting of it may have been effected in any degree by improper motives? Or is the judgment of this Houſe ſo feeble, that it may not be truſted?

Gentlemen tell us, however, that the law is materially defective, nay, that it is unconſtitutional. What follows? Gentlemen bid us repeal it. But is this juſt reaſoning? If the law be only defective, why not amend? And if unconſtitutional, why repeal? In this caſe no repeal can be neceſſary; the law is in itſelf void; it is a mere dead letter.

To ſhew that it is unconſtitutional, a particular clauſe is pointed out, and an inference is made, as in the caſe of goods, where becauſe there is one contraband article on board, the whole cargo is forfeited. Admit for a moment, that the part alluded to were unconſtitutional, this would in no wiſe affect the remainder. That part would be void; or if you think proper, you can repeal that part.

Let us, however, examine the clauſe objected to on the ground of the conſtitution. It is ſaid, that by this law the *diſtrict* judges in Tenneſſee and Kentucky, are removed from office, by making them *circuit judges*. And again, that you have by law appointed two new offices, thoſe of *circuit judges*, and filled them by law, inſtead of purſuing the

modes of appointment prescribed by the constitution. To prove all this, the gentleman from Virginia did us the favour to read those parts of the law which he condemns; and if I can trust to my memory, it is clear from what he read, that the law does not remove these *district judges*, neither does it appoint them to the office of *circuit judges*. It does indeed put down the *district courts*; but is so far from destroying the *offices* of district judge, that it declares the persons filling *those offices*, shall perform the duty of holding the *circuit courts*. And so far is it from appointing *circuit judges*, that it declares the *circuit courts* shall be held by the *district judges*. But gentlemen contend, that to *discontinue* the districts courts, was in effect to *remove* the district judges. This, sir, is so far from being a just inference from the law, that the direct contrary follows as a necessary result; for it is on the principle that these judges continue in office after their courts are discontinued, that the new duty of holding other courts, is assigned to them. But gentlemen say, this doctrine militates with the principles we contend for. Surely not. It must be recollected, sir, that we have repeatedly admitted the right of the legislature, to change, alter, modify and amend, the judiciary system, so as best to promote the interest of the people. We only contend, that you shall not exceed, or contravene the authority, by which you act. But, say gentlemen, you forced this new office on the district judges, and this is in effect, a new

appointment. I anſwer, that the queſtion can only ariſe on the refuſal of thoſe judges to act. But is it unconſtitutional to aſſign new duties to officers already exiſting? I fear, that if this conſtruction be adopted, our labours will ſpeedily end; for we ſhall be ſo ſhackled, that we cannot move. What is the practice? Do we not, every day call upon particular officers, to perform duties, not previouſly aſſigned to, or required of them? And muſt the executive, in every ſuch caſe make a new appointment?

But, as a further reaſon to reſtore, by repealing this law, the old ſyſtem, an honourable member from North-Carolina, has told us, the judges of the ſupreme court ſhould attend in the ſtates, to acquire a competent knowledge of local inſtitutions, and for this purpoſe ſhould continue to ride the circuits. I believe there is great uſe in ſending young men to travel; it tends to enlarge their views, and give them more liberal ideas than they might otherwiſe poſſeſs. Nay, if they reſide long enough in foreign countries, they may become acquainted with the manners of the people, and acquire ſome knowledge of their civil inſtitutions. But I am not quite convinced, that riding rapidly from one end of this country to the other, is the beſt way to ſtudy law. I am inclined to believe, that knowledge may be more conveniently acquired in the cloſet, than upon the high road. It is, however, to be preſumed, that the firſt magiſtrate would, in ſelecting perſons to fill theſe offices, take the beſt characters from

the different parts of the country, who already poſſeſs the needful acquirements. But admitting that the Preſident ſhould not duly exerciſe in this reſpect his diſcretionary powers, and admitting that the ideas of the gentleman are correct, how wretched muſt be our condition! Theſe, our judges, when called on to exerciſe their functions, would but begin to learn their trade, and that too at a period of life, when the intellectual powers with no great facility can acquire new ideas. We muſt, therefore, have a double ſet of judges. One ſet of apprentice judges to ride circuits and learn, the other ſet of maſter judges to hold courts and decide controverſies.

We are told, ſir, that the repeal aſked for, is important, in that it may eſtabliſh a precedent; for that it is not merely a queſtion on the propriety of diſbanding a corps of ſixteen rank and file; but that proviſion may hereafter be made, not for ſixteen, but for ſixteen hundred, or ſixteen thouſand judges, and that it may become neceſſary to turn *them* to the right about. Mr. Preſident, I will not, I cannot preſume, that any ſuch proviſion will ever be made, and therefore I cannot conceive any ſuch neceſſity; I will not ſuppoſe, for I cannot ſuppoſe, that any party or faction will ever do any thing ſo wild, ſo extravagant. But I will aſk, how does this ſtrange ſuppoſition conſiſt with the doctrine of gentlemen, that public opinion is a ſufficient check on the legiſlature, and a ſufficient ſafe-guard to the

people. Put the caſe to its conſequences, and what becomes of the check? Will gentlemen ſay it is to be found in the force of this wiſe precedent? Is this to control ſucceeding rulers in their wild, their mad career? But how? Is the creation of judicial officers the only thing committed to their diſcretion? Have they not, according to the doctrine contended for, our all at their diſpoſition, with no other check than public opinion, which, according to the ſuppoſition, will not prevent them from committing the greateſt follies, and abſurdities? Take then all the gentleman's ideas, and compare them together, it will reſult that here is an ineſtimable treaſure, put into the hands of drunkards, madmen, and fools.

But away with all theſe derogatory ſuppoſitions. The legiſlature may be truſted. Our government is a ſyſtem of ſalutary checks. One legiſlative branch is a check on the other. And ſhould the violence of party ſpirit bear both of them away, the Preſident, an officer high in honour, high in the public confidence, charged with weighty concerns, reſponſible to his own reputation, and to the world, ſtands ready to arreſt their too impetuous courſe. This is our ſyſtem. It makes no mad appeal to every mob in the country. It appeals to the ſober ſenſe of men ſelected from their fellow-citizens, for their talents, for their virtue—of men in advanced life, and of matured judgment. It appeals to their underſtanding, to their integrity, to their honour, to their love of fame, to their ſenſe of ſhame. If all

theſe checks ſhould prove inſufficient, and alas! ſuch is the condition of human nature, that I fear they will not always be ſufficient, the conſtitution has given us one more. It has given us an independent judiciary. We have been told, that the executive authority carries your laws into execution. But let us not be the dupes of ſound. The executive magiſtrate commands indeed your fleets and armies; and duties, impoſts, exciſes, and all other taxes, are collected, and all expenditures are made by officers whom he has appointed. So far indeed he executes your laws. But theſe, his acts apply not often to individual concerns. In thoſe caſes ſo important to the peace and happineſs of ſociety, the execution of your laws is confided to your judges. And *therefore* are they rendered independent. Before then, that you violate that independence—Pauſe. There are ſtate ſovereignties, as well as the ſovereignty of the general government. There are caſes, too many caſes, in which the intereſt of one, is not conſidered as the intereſt of the other. Should theſe conflict, if the judiciary be gone, the queſtion is no longer of law, but of force. This is a ſtate of things which no honeſt and wiſe man can view without horror.

Suppoſe, in the omnipotence of your legiſlative authority, you trench upon the rights of your fellow citizens, by paſſing an unconſtitutional law: if the judiciary department preſerve its vigour, it will ſtop you ſhort. Inſtead of a reſort to arms, there

will be a happier appeal to argument. Suppoſe a caſe ſtill more impreſſive. The Preſident is at the head of your armies. Let one of his generals, fluſhed with victory, and proud in command, preſume to trample on the rights of your moſt inſignificant citizen. Indignant of the wrong, he will demand the protection of your tribunals; and, ſafe in the ſhadow of their wings, will laugh his oppreſſor to ſcorn.

Having now, I believe, examined all the arguments adduced to ſhew the expediency of this motion, and which, fairly ſifted, reduce themſelves at laſt, to theſe two things, reſtore the ancient ſyſtem, and ſave the additional expenſe, before I cloſe, what I have to ſay on this ground, I hope I ſhall be pardoned for ſaying one or two words about the expenſe. I hope, alſo, that notwithſtanding the epithets which may be applied to my arithmetic, I ſhall be pardoned for uſing that which I learnt at ſchool. It may have deceived me when it taught that two and two make four. But, though it ſhould *now* be branded with opprobrious terms, I muſt *ſtill* believe, that two and two do *ſtill* make four. Gentlemen of newer theories, and of higher attainments, while they ſmile at my inferiority, muſt bear with my infirmities, and take me as I am.

In all this great ſyſtem of ſaving, in all this oſtentatious economy, this rage of reform, how happens it that the eagle eye has not yet been turned to the mint? That no one piercing glance has been

able to behold the expenditures of that department? I am far from wiſhing to overturn it. Though it be not of great neceſſity, nor even of ſubſtantial importance; though it be but a ſplendid trapping of your government: yet, as it may, by impreſſing on your current coin, the emblems of your ſovereignty, have ſome tendency to encourage a national ſpirit, and to foſter the national pride, I am willing to contribute my ſhare to its ſupport. Yes, ſir, I would foſter the national pride. I cannot, indeed, approve of national vanity, nor feed it with vile adulation. But I would gladly cheriſh the lofty ſentiment of national pride. I would wiſh my countrymen to feel like Romans, to be as proud as Engliſhmen, and, going ſtill further, I would wiſh them to veil their pride in the well-bred modeſty of French politeneſs. But, can this eſtabliſhment, the mere decoration of your political edifice, can it be compared with the maſſy columns on which reſt your peace and ſafety? Shall the ſtriking of a few half-pence be put into a parallel with the diſtribution of juſtice? I find, ſir, from the eſtimates on your table, that the ſalaries of the officers of your mint amount to 10,600 dollars, and that the expenſes are eſtimated at 10,900; making 21,500 dollars.

I find, that the actual expenditure of the laſt year, excluſive of ſalaries, amounted to 25,154 44

Add the ſalaries, 10,600

We have a total of, Dollars, 35,754 44

A ſum which exceeds the ſalary of theſe ſixteen judges.

I find, further, that during the laſt year they have coined cents and half cents to the amount of 10,473 dollars and 29 cents. Thus, their copper coinage falls a little ſhort of what it coſts us for their ſalaries. We have, however, from this eſtabliſhment, about a million cents, one to each family in America. A little emblematic medal, to be hung over their chimney pieces; and this is all their compenſation for all that expenſe. Yet, not a word has been ſaid about the *mint*; while the judges, whoſe ſervices are ſo much greater, and of ſo much more importance to the community, are to be ſtruck off at a blow, in order to ſave an expenſe, which, compared with the object, is pitiful. What concluſion, then, are we to draw from this predilection?

I will not pretend to aſſign to gentlemen, the motives by which they may be influenced; but if I ſhould permit myſelf to make the inquiry, the ſtyle of many obſervations, and more eſpecially the manner, the warmth, the irritability, which have been exhibited on this occaſion, would lead to a ſolution of the problem. I had the honour, ſir, when I addreſſed you, the other day, to obſerve, that I believed the univerſe could not afford a ſpectacle more ſublime, than the view of a powerful ſtate kneeling at the altar of juſtice, and ſacrificing there, her paſſion and her pride. That I once foſtered the hope of beholding that ſpectacle of magnanimity in Amo-

rica. And now, what a world of figures has the gentleman from Virginia formed on his miſapprehenſion of that remark. I never expreſſed any thing like exultation at the idea of a ſtate ignominiouſly dragged in triumph, at the heels of your judges. But, permit me to ſay, the gentleman's exquiſite ſenſibility on that ſubject, his alarm and apprehenſion, all ſhew his ſtrong attachment to ſtate authority. Far be it from me, however, to charge the gentleman with improper motives. I know that his emotions ariſe from one of thoſe imperfections in our nature, which we cannot remedy. They are excited by cauſes which have naturally made him hoſtile to this conſtitution, though his duty compels him, reluctantly, to ſupport it. I hope, however, that thoſe gentlemen, who entertain different ſentiments, and who are leſs irritable on the ſcore of ſtate dignity, will think it eſſential to preſerve a conſtitution, without which, the independent exiſtence of the ſtates themſelves, will be but of ſhort duration.

This, ſir, leads me to the ſecond object I had propoſed. I ſhall, therefore, pray your indulgence while I conſider how far this meaſure is *constitutional.*

I have not been able to diſcover the expediency, but will now, for argument's ſake, admit it; and here, I cannot but expreſs my deep regret for the ſituation of an honourable member from North-Carolina. Tied faſt, as he is, by his inſtructions,

arguments, however forcible, can never be effectual. I ought, therefore, to wiſh, for his ſake, that his mind may not be convinced by any thing I ſhall ſay; for hard, indeed, would be his condition, to be bound by the contrarient obligations of an order, and an oath. I cannot, however, but expreſs my profound reſpect for the talents of thoſe who gave him his inſtructions, and who, ſitting at a diſtance, without hearing the arguments, could better underſtand the ſubject than their ſenator, on this floor, after full diſcuſſion.

The honourable member from Virginia, has repeated the diſtinction, before taken, between the ſupreme and the inferior tribunals; he has inſiſted on the diſtinction between the words *ſhall* and *may*; has inferred, from that diſtinction, that the judges of the inferior courts are ſubjects of legiſlative diſcretion; and has contended, that the word *may*, includes all power reſpecting the ſubject to which it is applied; conſequently, to raiſe up, and to put down, to create, and to deſtroy. I muſt entreat your patience, ſir, while I go more into this ſubject than I ever ſuppoſed would be neceſſary. By the article, ſo often quoted, it is declared, "That the judicial power of the United States, *ſhall* be veſted in one ſupreme court, and in ſuch inferior courts, as the Congreſs *may*, from time to time, eſtabliſh." I beg leave to recall your attention to what I have already ſaid of theſe inferior courts. *That the original jurisdiction of various subjects being given ex-*

*clusively to them, it became the bounden duty of Congress to establish such courts.* I will not repeat the argument already uſed on that ſubject. But I will aſk thoſe who urge the diſtinction between the ſupreme court and the inferior tribunals, whether a law was not previouſly neceſſary before the ſupreme court could be organized. They reply, that the conſtitution ſays, there *ſhall* be a ſupreme court, and, therefore, the Congreſs are commanded to organize it, while the reſt is left to their diſcretion. This, ſir, is not the fact. The conſtitution ſays, the judicial power ſhall be veſted in *one* ſupreme *court*, and in inferior *courts*. The legiſlature can, therefore, only organize *one* ſupreme court, but they may eſtabliſh as many inferior courts as they ſhall think proper. The deſignation made of them, by the conſtitution, is, ſuch inferior courts as the Congreſs may, from time to time, ordain and *eſtabliſh*. But why, ſay gentlemen, fix preciſely *one* ſupreme court, and leave the reſt to legiſlative diſcretion? The anſwer is ſimple. It reſults from the nature of things, from the exiſtent and probable ſtate of our country. There was no difficulty in deciding, that *one*, and *only one*, ſupreme court would be proper or neceſſary, to which ſhould lie appeals from inferior tribunals. Not ſo as to theſe. The United States were advancing in rapid progreſſion. Their population, of three millions, was ſoon to become five, then ten, afterwards twenty millions. This was well known, as far as the future can become an ob-

ject of human comprehenſion. In this increaſe of numbers, with a ſtill greater increaſe of wealth, with the extenſion of our commerce, and the progreſs of the arts, it was evident, that, although a great many tribunals would become neceſſary, it was impoſſible to determine either the preciſe number or the moſt convenient form. The convention did not pretend to this preſcience; but had they poſſeſſed it, would it have been proper to have eſtabliſhed, *then*, all the tribunals neceſſary for all future times? Would it have been wiſe to have planted courts among the Chickaſaws, the Chocktaws, the Cherokees, the Tuſcaroras, and God knows how many more, becauſe, at ſome future day, the regions over which they roam might be cultivated by poliſhed men? Was it not proper, wiſe, neceſſary, to leave in the diſcretion of Congreſs, the number and the kind of courts, which they might find it proper to *eſtabliſh* for the purpoſe deſignated by the conſtitution. This ſimple ſtatement of facts, facts of public notoriety, is, alone, a ſufficient comment on, and explication of, the word, on which gentlemen have ſo much relied. The convention in framing, the people in adopting, this compact, ſay, the judicial power *ſhall* extend to many caſes, the original cognizance whereof ſhall be by the inferior courts; but it is neither neceſſary, nor even poſſible, *now* to determine their number, or their form; *that* eſſential power, therefore, ſhall veſt in ſuch inferior courts, as the Congreſs may,

from time to time, in the progreſſion of time, and according to the indication of circumſtances, *eſtabliſh*. Not *provide* or *determine*, but *eſtabliſh*. Not a mere temporary proviſion, but an *eſtabliſhment*. If, after this, it had ſaid, in general terms, that *judges* ſhould hold their offices during good behaviour, could a doubt have exiſted on the interpretation of this act, under all its attending circumſtances, that the judges of the inferior courts were intended, as well as thoſe of the ſupreme court? But did the framers of the conſtitution ſtop there? Is there then nothing more? Did they riſque on theſe grammatical niceties the fate of America? Did they reſt here the moſt important branch of our government? Little important, indeed, as to foreign danger; but infinitely valuable to our domeſtic peace, and to perſonal protection againſt the oppreſſion of our rulers. No. Leſt a doubt ſhould be raiſed, they have carefully connected the judges of both courts in the ſame ſentence; they have ſaid, "the judges *both of the ſupreme and inferior courts*," thus coupling them inſeparably together. You may cut the bands, but you can never untie them. With ſalutary caution, they deviſed this clauſe, to arreſt the overbearing temper, which, they knew, belonged to legiſlative bodies. They do not ſay the judges, ſimply, but the judges of the *ſupreme* and *inferior* courts, ſhall hold their offices during good behaviour. They ſay, therefore, to the legiſlature, you may judge of the pro-

priety, the utility, the neceſſity, of organizing theſe courts; but, when *eſtabliſhed*, you have done your duty. Anticipating the courſe of paſſion, in future times, they ſay, to the legiſlature, you ſhall not diſgrace yourſelves, by exhibiting the indecent ſpectacle, of judges, eſtabliſhed by one legiſlature, removed by another. We will ſave *you* alſo from yourſelves. We ſay, theſe judges *ſhall* hold their offices; and ſurely, ſir, to pretend that they can hold their office, after the office is deſtroyed, is contemptible.

The framers of this conſtitution had ſeen much, read much, and deeply reflected. They knew, by experience, the violence of popular bodies; and, let it be remembered, that ſince that day, many of the ſtates, taught by experience, have found it neceſſary to change their forms of government, to avoid the effects of that violence. The convention contemplated the very act you now attempt. They knew alſo the jealouſy and the power of the ſtates; and they eſtabliſhed, for *your* and for *their* protection, this moſt important department. I beg gentlemen to hear and to remember what I ſay. It is this department alone, and it is the independence alone of this department, which can ſave you from civil war. Yes, ſir, adopt the language of gentlemen; ſay, with them, by the act to which you are urged, "If we cannot remove the judges, we can deſtroy them." Eſtabliſh thus the dependence of the judiciary department. Who will reſort to them for protection againſt you? Who will confide in,

who will be bound by their decrees? Are we then to reſort to the ultimate reaſon of kings? Are our arguments to fly from the mouths of our cannon?

We are told that we may violate our conſtitution, becauſe ſimilar conſtitutions have been violated elſewhere. Two ſtates have been cited to that effect, Maryland and Virginia. The honourable gentleman from Virginia, tells us, that when this happened, in the ſtate he belongs to, no complaint was made by the judges, I will not enquire into that fact, although I have the proteſt of the judges now lying before me; judges, eminent for their talents, renowned for their learning, reſpectable for their virtue. I will not enquire what conſtitutions have been violated. I will not aſk either when or where this dangerous practice began, or has been followed. I will admit the fact. What does it prove? Does it prove, that, becauſe they have violated, we alſo may violate? Does it not prove directly the contrary? Is it not the ſtrongeſt reaſon on earth for preſerving the independence of our tribunals? If it be true that they have, with ſtrong hand, ſeized *their* courts, and bent them to their will, ought we not to give ſuitors a fair chance for juſtice in *our* courts, or muſt the ſuffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain caſes, which, he conſiders as forming neceſſary exceptions to the principles for

which we contend. Permit me to ſay, that neceſſity is a hard law, and frequently proves too much; and, let the gentleman recollect, that arguments which prove too much prove nothing.

He has inſtanced a caſe where it may be proper to appoint commiſſioners, for a limited time, to ſettle ſome particular deſcription of controverſies. Undoubtedly it is always in the power of Congreſs to form a board of commiſſioners for particular purpoſes. He aſks, are *theſe* inferior courts, and muſt *they* alſo exiſt forever? I anſwer, that the nature of their offices muſt depend upon the law by which they are created; if called to exerciſe the judicial functions, deſignated by the conſtitution, they muſt have an exiſtence conformable to its injunctions.

Again, he has inſtanced the Miſſiſippi territory, claimed by, and which may be ſurrendered to, the ſtate of Georgia, and a part of the Union, which may be conquered by a foreign enemy. And he aſks, triumphantly, are our inferior courts to remain after our juriſdiction is gone? This caſe reſts upon a principle ſo ſimple, that I am ſurpriſed the honourable member did not perceive the anſwer in the very moment when he made the objection. Is it by our act that a country is taken from us by a foreign enemy? Is it by our conſent that our juriſdiction is loſt? I had the honour, in ſpeaking the other day, expreſsly, and for the moſt obvious reaſons, to except the caſe of conqueſt. As well

might we contend for the government of a town ſwallowed up by an earthquake.

General MASON explained: He had ſuppoſed the caſe of territory conquered, and afterwards ceded to the conqueror, or ſome other territory ceded in lieu of it.

Mr. MORRIS. The caſe is preciſely the ſame. Until after the peace, the conqueſt is not complete. Every body knows, that until the ceſſion by treaty, the original owner has the poſtliminary right to a territory taken from him. Beyond all queſtion, where Congreſs are compelled to cede the territory, the judges can no longer exiſt, unleſs the new ſovereign confer the office. Over ſuch a territory, the authority of the conſtitution ceaſes, and of courſe the rights which it confers.

It is ſaid, the judicial inſtitution is intended for the benefit of the people, and not of the judge; and it is complained of, that in ſpeaking of the office, we ſay, it is *his* office. Undoubtedly the inſtitution is for the benefit of the people. But the queſtion remains, how will it be rendered moſt beneficial? Is it by making the judge independent, by making it *his* office; or is it by placing him in a ſtate of abject dependence, ſo that the office ſhall be his to-day, and belong to another to-morrow? Let the gentlemen hear the words of the conſtitution: it ſpeaks of *their* offices, conſequently, as applied to a ſingle judge, of *his* office, to be exerciſed

by him, for the benefit of the people of America, to which exerciſe, his *independence* is as neceſſary as his *office*.

The gentleman from Virginia has, on this occaſion, likened the judge to a bridge, and to various other objects; but I hope for his pardon, if, while I admire the lofty flights of his eloquence, I abſtain from noticing obſervations, which, I conceive, to be utterly irrevelant.

The ſame honourable member has not only given us his hiſtory of the ſupreme court, but has told us of the manner in which they do buſineſs, and expreſſed his fears, that having little elſe to do, they will do miſchief. We are not competent, ſir, to examine, nor ought we to prejudge, their conduct. I am perſuaded that they will do their duty, and preſume they will have the decency to believe that we do our duty. In ſo far as they may be buſied with the great miſchief of checking the legiſlative or executive departments, in any wanton invaſion of our rights, I ſhall rejoice in that miſchief. I hope, indeed, they will not be ſo buſied, becauſe I hope we ſhall give them no cauſe. But I alſo hope, they will keep an eagle eye upon us, leſt we ſhould. It was partly for this purpoſe they were eſtabliſhed, and, *I truſt, that when properly called on, they will dare to act*. I know this doctrine is unpleaſant. I know it is more popular to appeal to public opinion, that equivocal tranſient being, which exiſts no where, and every where. But if ever the occaſion calls for it,

I truſt, that the ſupreme court will not neglect doing the great miſchief of ſaving this conſtitution which can be done much better by their deliberations, than by reſorting to what are called revolutionary meaſures.

The honourable member from North-Carolina, ſore preſt by the delicate ſituation in which he is placed, thinks he has diſcovered a new argument in favour of the vote which he is inſtructed to give. As far as I can enter into his ideas, and trace their progreſs, he ſeems to have aſſumed the poſition which was to be proved, and then ſearched through the conſtitution, not to diſcover whether the legiſlature have the right contended for, but whether, admitting them to poſſeſs it, there may not be ſomething which might not comport with that idea. I ſhall ſtate the honourable member's argument, as I underſtand it, and if miſtaken, pray to be corrected. He read to us that clauſe which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, has obſerved, that this clauſe muſt relate, ſolely, to a removal by the executive power, whoſe right to remove, though not indeed any where mentioned in the conſtitution, has been admitted in a practice founded on legiſlative conſtruction.

That as the tenure of the office is during *good behaviour*, and as the clauſe reſpecting impeachment does not ſpecify *misbehaviour*, there is evidently a cauſe of removal which cannot be reached by im-

peachment, and of courſe (the executive not being permitted to remove) the right muſt neceſſarily devolve on the legiſlature. Is this the honourable member's argument? If it be, the reply is very ſimple. *Misbehaviour* is not a term known in our law. The idea is expreſſed by the word *misdemeanor*; which word is in the clauſe quoted reſpecting impeachments. Taking therefore, the two together, and ſpeaking plain old Engliſh, the conſtitution ſays: "The judges ſhall hold their offices ſo long as they ſhall *demean* themſelves *well*, but if they ſhall *misdemean*, if they ſhall, on impeachment, be convicted of *misdemeanor*, they ſhall be removed. Thus, ſir, the honourable member will find that the one clauſe, is juſt as broad as the other. He will ſee, therefore, that the legiſlature can aſſume no right from the deficiency of either, and will find that the clauſe which he relied on goes, if rightly underſtood, to the confirmation of our doctrine.

Is there a member of this houſe, who can lay his hand on his heart, and ſay, that conſiſtently with the plain words of our conſtitution we have a right to repeal this law? I believe not. And if we undertake to conſtrue this conſtitution to our purpoſes, and ſay, that public opinion is to be our judge, there is an end to all conſtitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wiſh to deſtroy the firſt magiſtrate, you can deſtroy him. And ſhould he to-morrow be able to conciliate to him the popular

will, and lead the people to wiſh for your deſtruction, it is eaſily effected. Adopt this principle, and the whim of the moment will not only be the law, but the conſtitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her ſervants. But why is ſhe in that ſituation? Is it not becauſe popular opinion was called on to decide every thing, until thoſe who wore bayonets decided for all the reſt. Our ſituation is peculiar. At preſent our national compact can prevent a ſtate from acting hoſtilely towards the general intereſt. But let this compact be deſtroyed, and each ſtate becomes inſtantaneouſly veſted with abſolute ſovereignty. Is there no inſtance, of a ſimilar ſituation, to be found in hiſtory? Look at the ſtates of Greece. They were once in a condition not unlike to that in which we ſhould then ſtand. They treated the recommendations of their Amphictionic Council (which was more a meeting of ambaſſadors than a legiſlative aſſembly) as we did the reſolutions of the old Congreſs. Are we wiſe? So were they. Are we valiant? They alſo were brave. Have we one common language, and are we united under one head? In this alſo there is a ſtrong reſemblance. But, by their diviſions, they became at firſt victims of the ambition of Philip, and were at length ſwallowed up in the Roman empire. Are we to form an exception to the general principles of human nature, and to all the examples of hiſtory?

And are the maxims of experience to become falſe, when applied to our fate?

Some, indeed, flatter themſelves, that our deſtiny will be like that of Rome. Such indeed it might be, if we had the ſame wiſe, but vile, ariſtocracy, under whoſe guidance they became the maſters of the world. But we have not that ſtrong ariſtocratic arm, which can ſeize a wretched citizen ſcourged almoſt to death by a remorſeleſs creditor, turn him into the ranks, and bid him, as a ſoldier, bear our eagle in triumph round the globe. I hope to God we ſhall never have ſuch an abominable inſtitution. But what, I aſk, will be the ſituation of theſe ſtates (organized as they now are) if, by the diſſolution of our national compact, they be left to themſelves? What is the probable reſult? We ſhall either be the victims of foreign intrigue, and, ſplit into factions, fall under the domination of a foreign power; or elſe, after the miſery and torment of civil war, become the ſubjects of an uſurping military deſpot. What but this compact! What but this ſpecific part of it, can ſave us from ruin? The judicial power; that fortreſs of the conſtitution, is now to be overturned. Yes, with honeſt Ajax, I would not only throw a ſhield before it, I would build around it a wall of braſs. But I am too weak to defend the rampart againſt the hoſt of aſſailants. I muſt call to my aſſiſtance their good ſenſe, their patriotiſm, and their virtue. Do not, gentlemen, ſuffer the rage of paſſion to drive reaſon

from her ſeat. If this law be indeed bad, let us join to remedy the defects. Has it been paſſed in a manner which wounded your pride, or rouſed your reſentment? Have, I conjure you, the magnanimity to pardon that offence. I intreat, I implore you, to ſacrifice thoſe angry paſſions, to the intereſts of our country. Pour out this pride of opinion on the altar of patriotiſm. Let it be an expiatory libation for the weal of America. Do not, for God's ſake, do not ſuffer that pride to plunge us all into the abyſs of ruin. Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong—it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will, which has brought us frail beings into political exiſtence? That opinion is but a changeable thing. It will ſoon change. This very meaſure will change it. You will be deceived. Do not, I beſeech you, in reliance on a foundation ſo frail, commit the dignity, the harmony, the exiſtence of our nation, to the wild wind. Truſt not your treaſure to the waves. Throw not your compaſs and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Caſt not away this only anchor of our ſafety. I have ſeen its progreſs. I know the difficulties through which it was obtained. I ſtand in the preſence of Almighty God, and of the world. I declare to you, that if you loſe this charter, never,

no never! will you get another. We are now, perhaps arrived at the parting point. Here, *even here*, we ſtand on the brink of fate. Pauſe, then—Pauſe—For heaven's ſake—Pauſe.

Mr. BRECKENRIDGE. It is high time, Mr. Preſident, that the attention of the committee ſhould be again called to the *real* merits of the queſtion under diſcuſſion. We have wandered long enough, with the gentlemen in the oppoſition, in thoſe regions of fancy, and of terror, to which they have led us. They muſt indulge us in returning and purſuing our object.

I cannot, however, in juſtice to my feelings go into the diſcuſſion, without making ſome remarks on the manner with which the attempts of thoſe who are in favour of this repeal have been treated. It has been echoed, and re-echoed at every ſentence, that we are attacking a law, matured by wiſdom, and upon which the rights, and ſecurity of the nation depend. That we are about to demoliſh the principal pillar in the fabric of our conſtitution, and thereby diſſolve the Union: and we are politely reminded by the gentleman from Connecticut, that the Roman government, alſo once the favourite fabric of the world, ſunk under the rude ſtroke of Gothic hands. Without inquiring what has entitled theſe honourable gentlemen, to aſſume to themſelves the excluſive guardianſhip of the conſtitution; and without inquiring what their attachment to it is; I do pretend, ſir, and that without paying to my-

ſelf any compliment, that *great* as theirs may be, mine is not leſs. Gentlemen may, therefore, for the future, ſave themſelves the trouble of attempting to arouſe my fears on this ſubject, when I once for all aſſure them, that my duty as a citizen, and my oath as a Senator, are more operative with me, than the warning voice of any man, or ſet of men, from what quarter ſoever it may come, and however high the pretenſions to experience and patriotiſm are, which they may chooſe to aſſume. But notwithſtanding my anxiety to preſerve, inviolate this conſtitution, I am not to be diverted from my object, by every tocſin of alarm, which gentlemen may think fit to ſound. Let me not be told of dangers to the conſtitution, and of dangers to the Union. Contemptible, indeed, is the baſis on which that conſtitution reſts, poor is the compliment to the good ſenſe and patriotiſm of the people of America, if that conſtitution, and their liberties can, as has been contended, be ſhaken to the centre, by the repeal of a ſingle law, of but a ſingle year's duration; ſuſpicious indeed in its origin, burdenſome and uſeleſs to the community, and affecting ſimply a few individuals, intereſted againſt that repeal, by paltry pecuniary conſiderations only.

I ſhall commence the remarks, I am about to make, by aſking a ſingle queſtion, which applies to *all* the obſervations of the gentlemen in the oppoſition. Has any gentleman ſhewed, or attempted to ſhew, that the increaſe of courts and judges, by this

law, was neceſſary, or juſtifiable, from the ſtate of things at the time it was paſſed? They have, I admit, attempted to ſhew, by reaſoning at a great diſtance, that they may be wanting hereafter, that our empire is large, that it is populating faſt, and that inſurrections might happen. Indeed, the gentlemen in the oppoſition have taken different, and inconſiſtent ground. The honourable gentleman from New-Hampſhire, venerable from his years, and reſpectable from his talents, tells us this law was not the offspring of a night, but has been well matured. The gentleman from Vermont, requeſts, that we may not proſtrate meaſures from pique. The gentleman from Maſſachuſetts takes different ground, and denies the power of Congreſs to repeal the law: and the gentleman from Connecticut ſays, that the original law, eſtabliſhing the judiciary, was but an *experiment*; and that experience is the only ſure teſt of all human contrivances.

Now for the conſiſtency of gentlemen. Some contend that the law was well matured, and ought not to be diſpenſed with. Others, that we cannot repeal it at all, whether matured or not well matured; and others, that it is a part of a ſyſtem of experiment. If, ſir, the firſt law was an experiment, this law is of courſe an experiment upon an experiment. Now for the reaſoning of the gentleman from Connecticut. "Experience is the only ſure teſt of all regulations;" therefore, you may make an experiment, and even an experiment upon

an experiment, but yet theſe experiments are unalterable. This is really an original notion about experiments; that you may try them, to ſee if they will anſwer, but whether they do, or do not, they are faſtened on you.

The honourable gentleman from Georgia, could not after two explanations atone to the gentleman from Connecticut, for an inadvertent expreſſion dropt by him in the warmth of argument, which carried an inſinuation, that this law was made in a *paſſion*. Let the gentleman from Connecticut, therefore, have it as he ſtated it, that the law paſſed with *great coolneſs and deliberation*. If gentlemen then ſuppoſed it was to be an irrepealable experiment, and to be entailed on their country, *I will ſay* it was a wanton experiment. I will ſay more: It was an experiment, which inſtead of being juſtified by a ſhadow of neceſſity, was negatived by the exiſting ſtate of things, at the time it was made; and that it was an experiment never made upon earth before, to try how courts and judges would anſwer without buſineſs. The abſurdity moreover, with reſpect to this ſtrange doctrine of irrepealable experiments, is increaſed, becauſe ſome gentlemen admit, that you may modify and change the law, but ſo as not to affect the judges. I underſtand them then on that point to mean, that you may modify and change the law as you pleaſe, provided you increaſe the number of judges, or the expenſe of the ſyſtem; but that you violate the conſtitution, if you diminiſh the

number of judges, or attempt to economize the ſyſtem: or in other words, it is conſtitutional to aboliſh any part, or all of the ſyſtem but what relates to the ſalary part of it: which in plain Engliſh, would be "do what you pleaſe, gentlemen, with our ſyſtem; *but ſpare, oh ſpare, thoſe for whom the ſyſtem was made, the judges.*"

The gentleman from Maſſachuſetts aſks for any inſtance of an attempt ſimilar to the one under conſideration. If he meant of an example of the abolition of courts and judges, which had become unneceſſary, I refer him to the examples of Maryland and Virginia, already cited; States compoſed of one million two-hundred thouſand inhabitants, and compoſing more than one-fifth part of the Union, who have each exerciſed that power. An inſtance, exactly, or very nearly ſimilar to the one under conſideration, cannot, I ſuppoſe, be adduced; for I would aſk him in my turn, if he can ſhew me in the Union, or the univerſe, an inſtance of a ſet of courts created without any buſineſs for them to act on; and beneficial to the judges only?

The gentleman from Maſſachuſetts has conceded a point, which is at variance with the principal ground he has taken. He admits, if a judge in a particular diſtrict be incompetent from inſanity, diſability, or other ſufficient cauſe to perform his duties, Congreſs might repeal ſo much of the law as relates to his diſtrict, and thereby put down that judge. How is this? If a law can be repealed,

and a judge put down, becauſe he is unable to diſcharge the duties of his office, cannot a law be repealed, and a judge be put down, where he has no duties to diſcharge. If, becauſe a judge who cannot diſcharge the duties actually aſſigned him, (although by the act of government) may be diſpenſed with, is it found reaſoning to ſay, that you cannot diſpenſe with a judge, although you have aboliſhed his duties? Again, purſuing the gentleman's own caſe, if *part* of a law can be repealed, and a particular diſtrict and judge put down, what is it that arreſts your power, as to all the diſtricts, and the whole corps of judges?

[Here Mr. JONATHAN MASON roſe to explain; and ſaid the gentleman had miſunderſtood him. The idea he intended to convey was, that if Congreſs had power to put down one judge, or one diſtrict, they had the power to put down all the courts and judges, but that they had no power to do either.]

Mr. BRECKENRIDGE ſaid, he was ſorry he had miſunderſtood the gentleman; he had ſo noted his obſervation; but he would then beg leave to notice an obſervation of the gentleman from New-York; which applies to this part of the ſubject. That gentleman has admitted, that you may new model your courts *for the benefit of the people;* but you cannot affect the judges; for they are *in* (to uſe his expreſſion) under the conſtitution; and he contends, that not

only the firſt ſec. of the 3d art. is *imperative*, *but alſo the the 8th ſec. of the firſt article, which gives Congreſs the "power to conſtitute tribunals inferior to the ſupreme court." This laſt ſection gives to Congreſs the power alſo to paſs bankrupt laws, naturalization laws, tax laws, &c. &c. Are all theſe powers imperative alſo? And after you have eſtabliſhed a poſt road, paſſed a bankrupt law, or a tax law, are they all irrepealable, and are all the officers created by them all, *in* alſo under the conſtitution? The ſame conſtruction applies to all; and ſhews them all to be *discretional* powers. But this modification is to be for the benefit of the people. Can it be for the benefit of the people, *never* to aboliſh courts? Two inſtances have been alread y cited. And what principle is it, which ought ſolely to actuate legiſlators, in enacting, modifying, or repealing any law, but the good of the people? Gentlemen really argue, as if they conſidered courts made for the judges, and not for the people.

Suppoſe this ſubject could be diſcuſſed by the people and the judges, what would be the language of each. The people would ſay, theſe additional courts are totally uſeleſs. The judges would reply, (if they hold the ſame opinions, that the gentlemen

* It will be observed, that Mr. Breckenridge must have mistaken entirely what was said by Mr. Morris, for this gentleman had not noticed the 8th section of the 1st article, either in his speech of the 8th, to which this is an answer, or in that made this day, of which Mr. Breckenridge takes no notice. The reason for making the mistake is obvious.

in the oppoſition do) that they are not uſeleſs, for they tend to inſpire terror, and keep men honeſt: The people allege there is no buſineſs for them to tranſact: The judges anſwer, that the country is increaſing faſt in population, and there *will be* buſineſs, perhaps, bye and bye: The people contend they ought not to incur an expenſe, without ſome advantage: Their honours reply, it amounts to but one cent a man, and is not worth growling about: The people however declare their determination to aboliſh theſe courts, as things for which they have no uſe: The judges then reply, in the language of the gentleman from New-York, "You are a den of robbers, your conſtitution is gone, and all men will fly your ſhores."

The gentleman from Maſſachuſetts admits, the Preſident has power to remove, at pleaſure, all officers appointed by him, but the judges; but does not ſee the force of my application of it. I apply it in this way: Although thoſe officers have a right to hold their offices at the will of the Preſident, and the legiſlature cannot remove them during the continuance of their offices, yet the legiſlature can remove without the will of the Preſident, by *aboliſhing* their offices. In caſe, for example, the exciſe law is repealed, what will become of the ſuperviſors, and other officers created by that law? They will go out with the law; for an extinguiſhment of their duties will neceſſarily carry with it an extinction of their offices, whether the Preſident wills it or not.

But a judge ſtands on more independent ground. He ſhall not be removed at the will of the Preſident, nor be ſtarved out by the legiſlature. He ſhall be removed from the exerciſe of his duties, for miſbehaviour only, *whilst exercising* thoſe duties: and during the continuance of his office, or, in other words, his duties, the legiſlature ſhall not diminiſh the conſideration annexed to thoſe duties. His independence and honeſty in office, therefore, are ſufficiently ſecured againſt executive or legiſlative influence.

But the gentleman from New-York has racked his very fertile imagination to render familiar to us by compariſons this wonderful and unprecedented thing; an officer without an office, a judge without a court, without duties, or without authority. He has likened him to a bridge, to a boat, to the national debt, and to an eight per cent. uſurer. I will ſpare your gravity, and that of the committee, by refraining to examine the ſimilitude as to the firſt two objects. What likeneſs is there between the ſalary of a judge, and the national debt? The national debt is a *vested right*; a right not accruing for ſervices which may be rendered, but for ſervices, or money, actually rendered or advanced. It is a debt, the conſideration for which we have acknowledged to have received, and for the diſcharge of which we have pledged ourſelves. It is a debt we are under moral obligations to pay, having previouſly received from the creditors, its

equivalent. How ſtands the caſe of the ſalary, which is ſaid to be appoſite? Is that a veſted right? Is that a debt for which the community have received an equivalent? It is neither. It is a debt which, from its nature, the public faith cannot ſtand pledged to pay, except ſo far only as the ſervices actually performed, require; it being dependent in its very creation on ſervices to be performed, and which may be diſpenſed with when they are no longer wanted.

Is the caſe of the eight per cent. uſurer more appoſite? If the occaſions of men induce them to reſort to the hoards of uſurers, it is a voluntary act; they know its intent and conſequences, and they ought, in juſtice, to be bound by their contract. Although Shylock may not be entitled to his pound of fleſh, yet he is entitled to his uſury and intereſt. And the caſe of the petty uſurer ſtands on the ſame ground, with all thoſe important uſurers, who loaned, at eight per cent. their money and ſtock to the United States, during her late preparations to fight the French.

The gentleman from New-York expreſſes his utter aſtoniſhment at the idea of judges and courts being too numerous; and refers us to the example of Alfred, whoſe courts and judges were ſo numerous and well organized, and had impoſed ſuch terror into his kingdom, that a purſe of gold might lay in ſafety on the high-way. I remember reading, long ſince, of theſe hundred courts, courts leet,

courts baron, &c. and, if I am not miſtaken, ſir, he had a court of *chivalry* too, of much about the ſame value and advantage in his kingdom as your additional courts are here. But, if the gentleman meditates ſuch extenſion and perfection in our judicial ſyſtem, why not reſort to the fountain head, and take example from *Moſes*, who is certainly higher authority. He, ſir, eſtabliſhed his rulers, or judges, of thouſands, of hundreds, of fifties, and of tens; and men too, ſays the book, hating *covetousness*; that is, I preſume, having no ſalaries. But I take it, that both Alfred and Moſes, had a wider range in legiſlation than this Senate, and therefore, their regulations cannot be very applicable.

The gentlemen, both from New-York and Connecticut, have preſſed upon us the policy of increaſing courts and judges, to prevent crimes and wrongs, to protect the weak againſt the ſtrong, and inſure virtue and humanity among the people. I deny both the propoſition and inference drawn from it, in the extent contended for. From whence, I aſk, do gentlemen draw their authority for ſuch extenſive legiſlation? From whence ariſes their power to paſs theſe laws, to prevent crimes, to protect the weak againſt the ſtrong, and to puniſh the guilty? Not from the conſtitution, I will ſafely affirm; for, under it, but three or four ſpecies of crimes are puniſhable by federal laws: to wit, treaſon, piracies, and felonies on the high ſeas, offences againſt the laws of nations, and counterfeiters of the ſecuri-

ties or coin of the United States. Theſe conſtitute their powers on the ſubject of criminal juriſprudence, and are the ſum total of our powers, written or unwritten; unleſs, indeed, the gentlemen draw ſome of their authority for their extenſive notions of legiſlation, from the *lex non ſcripta* of Alfred's country, which, I am told, ſome gentlemen conſider as attaching itſelf to our conſtitution. But, admitting the propoſition to be true, is the concluſion drawn from it well founded, that a multiplicity of courts and judges inſpire terror, and prevent litigation and the commiſſion of wrongs. I confeſs I am now, for the firſt time, to learn, that to inſpire terror, and prevent wrongs, you ought to embody an army of judges; and that to ſupport or diſcourage litigation, you ought to embody another ſet of men, their general attendants, called lawyers, who, it ſeems, for the firſt time, are to become peace-makers; who, with their robes and green bags, will ſtrike ſuch terror into the nation, that a purſe of gold may hang, in ſafety, by the high-way. Halcyon days theſe, indeed, which are promiſed from a continuance of theſe judges; and if not viſionary, I could then anſwer the gentleman from Maſſachuſetts, in the affirmative, that the millenium was indeed approaching.

The neceſſity for numerous courts and judges is alſo inſiſted on, by ſuggeſtions that foreign invaſions may happen, and that inſurrections may alſo happen; that conſequently great revenues will be

wanting, and conſequently numerous courts to enforce their collection. This is reaſoning at a very great diſtance indeed from the ſubject, to prove its utility. But I am willing to indulge the gentlemen and admit, that invaſion will happen, and annually, if he chuſes, and inſurrections quarterly; I will then contend, that until the population of America amounts to five times the preſent number, we ſhall not ſtand in need of as many judges as there now are, to adminiſter juſtice on all the ſubjects, which can rightfully, under the preſent conſtitution, be carried to federal adjudication.

The gentleman from New-York has favoured us with another argument on this head, not adreſſed to the fears, but to the pride of the people, and aſks if the paltry additional expenſe ought to have any weight, when it cannot amount to more than one cent a man. I anſwer, ſir, that one cent a man will not, to be ſure, oppreſs the people; but this is a very unfair way of appealing to the ability of the people, by ſhewing them among the thouſand items which compoſe the aggregate of their burdens, what each man's proportion is of one very ſmall item. But as that honourable gentleman has told us, "that he conſiders the government reſting on the reaſon of man, as a ſoleciſm," I ſhould ſuppoſe, with due deference to him, that the better way would be, to govern this machine man, to increaſe the army, rather than the judiciary. Twenty thouſand regulars, properly diſpoſed of, would make

us as honeſt as Alfred's ſubjects, and would coſt us only three or four dollars a head. This, too, is a kind of terror familiar in countries like Alfred's: but an army of judges is a new experiment, as we have been told this law is; and was reſerved for the politicians of theſe our enlightened times.

Much has been ſaid about the hardſhip which will ariſe to judges, who have quitted lucrative employments, and taken ſeats on the bench, conſidering them as permanent proviſions. One gentleman deſcribes them as a venerable ſet of men, bending under the weight of years, and not poſſeſſing the agility of poſt-boys; another, as men who have been induced to abandon the active and lucrative purſuits of the law. Take them as pourtrayed by either gentleman. If they are men of the firſt deſcription, there can be little hardſhip in permitting them to return to that ſtate of tranquillity and retirement from which they muſt have been no doubt reluctantly drawn; and to which their age and infirmities muſt again invite their return. If they are men of the laſt deſcription, can they not readily return to thoſe ſame active and lucrative purſuits which they had quitted? Have their talents and faculties, for the purſuits of which they were bred, been palſied, by a ſeat for a ſingle year on the bench? And can that ſingle year's derangement of their affairs be retributed only by a penſion of two thouſand dollars a year for life? Such calculations and demands muſt illy comport with the cha-

racter of thoſe of the firſt deſcription; and they are poor compliments, indeed, to the talents, legal acquirements, and legal ſtanding of the ſecond. But is there no hardſhip on the ſide of the community? Is it enough for them to be told by theſe judges, true it is you have eſtabliſhed an uſeleſs ſet of courts; but we have been lucky enough to get into office, the conſtitution protects us there, and get us out if you can? I doubt, ſir, this reaſoning would not be ſatisfactory to men poſſeſſing common honeſty, and the ordinary notions of right and wrong. It would not, however, be taken as a ſatisfactory ſet off againſt the fifty thouſand dollars annually.

The gentleman from New-York has contended ſtrongly againſt an idea, which, he apprehends is entertained of increaſing the power and influence of the ſtates, by leſſening your federal courts.

I hold out no ſuch idea. It was a ſurmiſe of the gentleman. I wiſh the federal government to poſſeſs and exerciſe all its rightful powers, but no more. I wiſh the ſtates alſo, to be left in the exerciſe of theirs. I do not wiſh to ſee every thing valuable extracted from them. I do not wiſh to ſee all poſſible ſubjects drawn into the great vortex of federal legiſlation and adjudication. I do not, in ſhort, wiſh, as ſome gentlemen may do, *to see one mighty consolidated sovereignty collected from and erected on the ruins of all the state sovereignties.*

It is now growing late, and the committee muſt be fatigued; I will treſpaſs very little longer on them.

Many of the obſervations, which I have anſwered, were, it is true, very foreign and irrelevent to the ſubject. They were, it is true, but the gleanings, as the gentlemen who have preceded me left little for me to anſwer.

But permit me, for a ſingle moment, to draw gentlemen's attention to the real merits of this queſtion, and aſk, have the arguments been fairly and ſatisfactorily anſwered by the gentlemen in the oppoſition; arguments which went to the many difficulties and abſurdities which would grow out of the conſtitution, under the conſtruction againſt which I contended; which went to ſhew, that the conſtitution could only be fairly and rationally conſtrued to ſecure the independency of a judge in office, during the continuance of that office; which went to ſhew, that the power of Congreſs, to erect inferior courts, was diſcretional, and was, therefore, neceſſarily accompanied by the power to aboliſh them; that by the conſtruction contended for, ſinecure offices for life would be erected under the conſtitutution; that the abſurdity of an officer without an office, would exiſt; that the power of legiſlation on judicial ſubjects would, in effect, be arreſted, indeed deſtroyed; and that it would produce the extraordinary phenomenon in our government of an officer not amenable to your laws, to your conſtitution, or to the people themſelves? I appeal to gentlemen, if theſe have been fairly and ſatisfactorily anſwered?—They have not.

After Mr. BRECKENRIDGE concluded, the houſe adjourned to the next day, Friday the fifteenth. The Vice-Preſident of the United States attending, Mr. BALDWIN who had been Preſident pro tempore, opened the debate. He obſerved that in the ſeat with which he had been honoured by the Senate during the preceding part of this debate, his duty had obliged him to pay particular attention to gentlemen who roſe to offer their opinions: he had felt himſelf pleaſed and inſtructed by one of the moſt luminous diſcuſſions, in both views of the queſtion, that he had ever witneſſed, which he hoped and truſted would guide the Senate to a uſeful and proper reſult. In this late ſtage of the debates it could not be expected of him to be able to contribute any thing new or important. But, as gentlemen had ſo generally thought proper to expreſs their opinions, he would not withhold a public declaration of his own.

He thought the range of this queſtion, and the field of argument had been made more extenſive than ſtrictly related to the queſtion; but they might be uſeful, in leading to a final determination on the ſubject of the reſolution now under conſideration. The remarks that had been made of improper motives and deſigns, on the one ſide and on the other, either that there was an intention to urge forward the powers of the government, till it was carried altogether beyond its principles, or that there was an inveterate ſyſtem of oppoſition to it,

which ſought nothing leſs than its overthrow, he ſhould take no notice of, as they had already been extended farther than he had wiſhed. His reſpect for worthy gentlemen, with the greater part of whom he had ſo long laboured in our public councils; his reſpect for the people whom they repreſented, and for the State Legiſlatures who had on this occaſion preferred them to their fellow-citizens, it is to be preſumed, from full experience of their talents and virtues, forbade him to entertain any doubt of their deſire to promote the beſt intereſts of their country, and to preſerve our excellent conſtitution, which they are all ſworn to ſupport. If at any time obſervations different from theſe eſcaped him, he hoped they would be conſidered as the ſuggeſtions of his own infirmity, and not the reſult of deliberate reflection. His own general opinion on ſuch ſubjects was, that it is the nature of all delegated power to increaſe: it has been very aptly ſaid, to be like the ſcrew in mechanics; it holds all it gains, and every turn gains a little more; the power keeps conſtantly accumulating, till it becomes abſolutely inſupportable, and then falls in ruins in a tremendous craſh, and the accumulation begins again; ſo that the hiſtory of civil ſociety is but a general view of theſe vaſt waves following each other oftentimes in dreadful ſucceſſion. That this was the tendency of ſociety, he thought appeared in ſome meaſure from our own ſhort hiſtory, whether viewed in relation to our ſtate or federal govern-

ments ; ſeveral of them had already made conſiderable advances in this courſe ; he knew of none of them that had declined. Though he hoped and truſted, that this fatal progreſſion would be ſlower in our country, than it had ever been before on the face of the earth, and that it would allow to us many ages of great political happineſs, yet he did not expect it would be found in the end to be an exception to his general remark. He alluded to ſeveral inſtances in the federal government, and obſerved generally, that as we were now in the thirteenth year, under the preſent conſtitution, as we had been thirteen years under the old ſyſtem of the articles of confederation, he thought it uſeful in our reflections to make a compariſon between them : during the firſt period of thirteen years, the federal government, as it was called, poſſeſſed neither legiſlative, nor judicial power, nor any revenue at all ; they were not able even to form their own body, by compelling the attendance of their members ; they attended or were abſent, as they pleaſed. Their ideas of the encroachments that it was neceſſary to make on the powers that were then in the poſſeſſion of the ſtate governments appeared to have been very different from ours ; they carried on a long and obſtinate war, and as they ſuppoſed, had nearly finiſhed a ſettlement of their accounts ; and yet there was much leſs complaint of a want of power, uneaſineſs and ſtruggles for more, at the cloſe of that firſt period of thirteen years, than at the preſent

time. He ſhould not enlarge on this view of the ſubject; when he ſaw that he was ſpeaking in the aſſembly of the moſt ancient ſtateſmen of our country, he knew that though he barely glanced at the ideas, their own recollections would preſent them in all their extent. The obſervations that had been before made by gentlemen on this view, had been ſo general, that he could only meet and qualify them by other general obſervations: he thought they did not furniſh a foundation to apprehend an overthrow of the government.

The reſolution now under conſideration, propoſes to reconſider and repeal the new judiciary law paſſed laſt ſeſſion; it does not follow, that this is an effort of a general plan of deſtruction, as applied to our federal government: all public bodies muſt at ſome times renew their own proceedings; while the maxim remains true, that it is the lot of human nature to err, this muſt be the caſe; parliamentary aſſemblies have proviſions for reconſidering their queſtions, and courts of juſtice for granting new trials.

The firſt and moſt natural ſource of argument that preſents itſelf on ſuch occaſions is the circumſtances in which the act took place; to enquire whether there was any ſurprize or unfairneſs, not according to principle and cuſtomary form. Gentlemen have had the candour ſeveral times to acknowledge, and it was very freſh in his own recolle[illegible], that this was the caſe on the paſſage of the

law, which the motion propoſes to repeal; that it was verily believed at the time, not to poſſeſs an actual majority of the votes of the other houſe, and therefore, every propoſed amendment was rejected by its friends in the Senate, as they did not conſider it ſafe to ſend it back open to any queſtion in the Houſe of Repreſentatives. He inſtanced the propoſed amendment to ſtrike out Bairdſtown, the place fixed by the law for the court in Kentucky, which was acknowledged to be a proper amendment, and afterwards introduced in a ſupplemental law; he ſaid he was himſelf now acting under an impreſſion that that law never did unite here in its favor an actual majority of votes, according to the rules of the Senate and of the conſtitution. He then read the rule of the Senate which forbids a ſenator to vote on a queſtion where he is intereſted, and a clauſe in ſection 6, article I. of the conſtitution, which prohibits a ſenator or repreſentative from making an office to hold it himſelf: he referred alſo to the ſettled principle in the inveſtigation of truth, that a perſon's relation of a common matter of fact in a queſtion of a few ſhillings value, could not be relied on, if he had even a remote intereſt in the reſult of it. He hoped his aſſurances would be accepted, that he did not make theſe remarks to excite any unpleaſant ſenſations; he wiſhed to avoid them; he touched them as ſlightly as he could, giving them their proper place in the argument; he was ſenſible they did not prove that law to be a bad one; but

formed the firſt and the ſtrongeſt reaſon why the ſubject ſhould be reconſidered, which was the main object of the preſent motion; for it was open to all amendments in its progreſs.

Another obvious ſource of argument, he ſaid, on this queſtion of repeal, is the comparative merit between this new judiciary law, and the old one, which will be reſtored, if this is repealed, with ſuch other proviſions as may be thought neceſſary. The whole of the diſcuſſion at the laſt ſeſſion, was on this ground; it is familiar to us all; it was then ample and convincing, ſo as to produce the effect which has been acknowledged; no doubt it would do the ſame, if repeated at this time; it is to be preſumed the effect of it is not loſt; to purſue it in all its detail on this occaſion, would make the diſcuſſion altogether too prolix and tedious. There were, however, two or three points in the compariſon he begged leave a little to dwell upon. Firſt. In taking a general look at the two ſyſtems, the ſtrongeſt point of diſtinction, which ſeizes the firſt view, is, that in the old ſyſtem the ſame judges hold the ſupreme court here and a court in each of the ſtates, with the exception of the ſtates over the mountains; in the new ſyſtem, now propoſed to be repealed, this is not the caſe; the courts in the ſeveral ſtates are held by different judges. This had ever appeared to him a radical, and vital failure in the new ſyſtem; it deprives the judges of the opportunity of a full knowledge of local

laws and uſages, and deſtroys the poſſibility of uniformity: it is alſo a main artery of healthful circulation in the body politic. In giving a ſatisfactory adminiſtration of a government over a country of this vaſt extent, the great object muſt be to avoid the neceſſity of dragging the people from the remote extremes, the diſtance of thouſands of miles, to the ſeat of our government, or far from their homes, where they cannot have the uſual advantages in courts of juſtice. While two of the judges of the ſupreme court, held a court in each ſtate, this was almoſt entirely avoided, except in ſome of the largeſt ſtates. The ſuits were rarely determined at the firſt court; at the ſecond court the judges were conſidered as bringing the ſenſe of the ſupreme court on the ſubject; it ſeemed to give as ſatisfactory a concluſion to the buſineſs, as if the parties had been themſelves before the ſupreme court. Though gentlemen all appear to ſubmit to the force of this argument, yet they ſuppoſe they defeat it by the vague and general declamation, that experience has proved it to be impracticable; that we ſhould have no more venerable judges; that men muſt be appointed for their agility rather than their wiſdom, &c. He averred experience had determined no ſuch thing; very venerable judges had gone through that duty from the beginning of the government, without any apparent injury to their conſtitutions, with as few reſignations as ordinarily take place among ſtate judges, and in fact, [illegible]

bodily labor than is required of many members of Congreſs for a much ſmaller compenſation; he thought experience proved that men equal to the labor, and alſo well fitted for the office, might be found, rather than give up ſo indiſpenſible a proviſion, eſpecially as under the preſent motion, additional proviſions may be made to render the ſyſtem more practicable and leſs laborious. The change that had been made was, no doubt, a great relief to the judges; but we have other and more numerous conſtituents whoſe relief muſt alſo be attended to.

2. Another ſtrong point in the comparative view of the two ſyſtems is, that the new law, now propoſed to be repealed, attempts to draw off more buſineſs from the ſtate courts to the federal courts. When gentlemen talk of expediency, may they not be aſked, what is the expediency of that meaſure? Will it make a more convenient and complete organization? When they talk of carrying juſtice to the door of every man, may they not be aſked whether that is moſt perfectly carrying juſtice to the door of every man? His ſituation in the former part of the debate was ſuch, that his duty would not permit him to take notes of what was then ſaid, but if he had the arguments of gentlemen on this head before him, he ſhould be pleaſed in applying it to every one of them, to ſee how they would appear to defeat themſelves by the application of this principle. This, ſaid he, goes directly to the great

defect in the theory of federal government, which has at all times given uneaſy apprehenſions to its beſt friends, reſpecting the final ſucceſs of this vaſt and benevolent experiment in government. The idea of a continent uniting under a general government, which ſhould ſettle general regulations, and do away the moſt common cauſes of war, is not a thought ſo much out of the ordinary ſubjects of reflection as to require any inventive or profound genius to call it into view. It is readily conceived that the eaſtern continent, as well as this weſtern, might have often reflected on the practicability of the vaſt experiment; the great diſcouragement which has probably prevented it, has been that the immenſe and unwieldly enginery which would be neceſſary to carry it on, to adminiſter its laws, and manage its money tranſactions, with tolerable intelligence and fidelity, and keep up the great vital circulation, is not within the compaſs of human faculties and endowments. If ours fails, it will be from that cauſe; its wiſeſt and beſt friends appear always to have been aware of it, and therefore have, as far as poſſible, directed it to a few great and general regulations, which ſeemed indiſpenſable, and which were leaſt difficult in their operation; but that it ſhould be put to ordinary buſineſs, then well done by ſtates, as though in its nature better ſuited to it than ordinary governments, had always appeared to him, to be the moſt unpromiſing direction that could be given to it. He conſidered, that as the ſtrongeſt

poſſible objection to the new judiciary law, now propoſed to be repealed, that it was unneceſſarily drawing the buſineſs from the ſtates, where it was as well lodged, and probably as well conducted, as in any government on earth, to the federal eſtabliſhment, where, if it was poſſible to conduct it at all, it was not poſſible to conduct it ſo well, and ſo much to the ſatisfaction of the people, for whom alone governments are inſtituted.

The 3d ſource of argument which he ſhould notice was the document No. 8, ſent by the executive. As this had already been the principal topic of argument to ſeveral gentlemen, and had been placed in ſo irreſiſtible a point of view, in ſupport of the propoſed reſolution, he ſhould add but few words upon it. It is ſaid the document is incorrect; it is ſufficiently correct for all the purpoſes of the argument, which depends not on there being three or four more or leſs ſuits in a particular place, but to ſhew that the old judiciary ſyſtem was perfectly ſufficient for all the buſineſs, and that the buſineſs was actually decreaſing when the ſyſtem was extended. To this the document is perfectly ſufficient, and concluſive. On this it has been obſerved, that there being but little buſineſs, and that decreaſing, is ſo far from being an objection to the ſyſtem, that it is the beſt argument in its favour; but this proves the perfection of the old judiciary ſyſtem, which was the cauſe of it, and is now propoſed to be reſtored, and not of the new, which is yet ſcarcely got into

operation. If the decreaſe of buſineſs proved the neceſſity of the further extent of the ſyſtem, in the judiciary law, the continuing to decreaſe, which appears ſince that time, proves that the ſyſtem ought now to be ſtill further extended

Mr. B. ſaid, he would proceed to ſubmit a few remarks on the view that had been taken of the ſubject in its relation to the conſtitution. It ſeems this part of the conſtitution is conſidered as capable of different meanings, and from ſo many different opinions expreſſed upon it he had no doubt it was the caſe. Although governments of written laws, and written conſtitutions are undoubtedly a great and invaluable ſecurity to the regular adminiſtration of public affairs, yet it muſt be acknowledged that, like every thing human, they are imperfect; they clearly define and ſettle many things which would otherwiſe be afloat; but they do not ſettle every thing; queſtions will ariſe in adminiſtering them, which occaſion honeſt doubts. When a new law is paſſed, the moſt upright and enlightened courts require a length of time to ſettle the practical queſtions under it, and to give definite meaning and preciſion to all its parts. This muſt be more likely to occur in written conſtitutions, which embrace ſuch variety of important ſubjects, generally in a very ſmall compaſs. Many queſtions of this kind have already been ſo far ſettled by practice on our conſtitution, that they have rarely been ſtirred of late. Thoſe occaſions had been repreſented at

the time, as very threatening to the government; Congreſs was then nearly equally divided upon them, and they did not in the end prove ſo diſaſtrous as had been predicted; they had generally terminated in favour of the ſtrict rather than the literal conſtruction of the inſtrument, not to make the words cover the moſt that they poſſibly could. It had been contended in the early years of the government, repeatedly, and with much earneſtneſs, that the preamble of the conſtitution was a grant of powers, and when a meaſure was propoſed, if it could be ſhewed to have a tendency "to form a more perfect union, eſtabliſh juſtice, inſure domeſtic tranquillity," &c. it was conſtitutional; the words "general welfare" in art. 1, ſec. 8, had been often urged for the ſame purpoſe, and as authorizing Congreſs to build manufacturing towns, a national univerſity, and to carry on any pecuniary enterprizes, with the public money; deliberate practice ſeems for many years to have ſettled the conſtruction that thoſe words ſhould not be conſidered as a diſtinct grant of power, but a limitation of the power granted in the former part of the article, to lay and collect taxes, &c. He inſtanced alſo the power of the Preſident to remove officers, and ſeveral others to the ſame effect. It was ſome reward, he ſaid, for the trouble they had had on ſimilar occaſions, that the greater part appeared now to be ſettled, as ſuch inſtances occurred much leſs frequently than formerly: the one which now preſents itſelf is new; he

expreſſed his confidence that a reſult as proper and ſatisfactory would take place on this, as on former occaſions.

He believed there were ſeveral points of this nature in relation to the judiciary on which the other departments of the government conſider themſelves as yet to have ſettled no practice; on which he obſerved generally, that if it had been intended to convey thoſe diſtinguiſhing powers which have lately been claimed in their favour, it might naturally have been expected that it would have been done in very conſpicuous characters, and not left to be obſcurely explored by conſtruction, not enlightened by the leaſt recollection from any body, on a ſubject and an occaſion certainly of the moſt impreſſive kind, and ſo little likely to have been forgotten. He ſaid, the extent that is now claimed to thoſe words in art. 3, ſection I. "That the judges ſhould hold their offices during good behaviour," was greater than he had before contemplated. His own judgment adopted the conſtruction that had been given by ſeveral gentlemen who ſupported the reſolution, and which they had illuſtrated ſo much at large, and ſo ably ſupported, that he ſhould add but few words upon it. The phraſe creating or eſtabliſhing office is familiar in our conſtitution and laws, and may be done by the conſtitution or by the legiſlature; its attributes are like the ordinary attributes of legiſlation, to be conducted as the wiſdom of the legiſlature, and the circumſtances of the country may

direct. Office in its original uſe is ſynonymous with duty. When the ſyſtem of duties is ſo particularly defined and preſcribed by the conſtitution, that the functionary is able to go on in the diſcharge of the duties, the office is created or eſtabliſhed by the conſtitution; when this is done by law, it is ſaid to be created or eſtabliſhed by law; the firſt may be of equal duration with the conſtitution; when it is created by law it may be of equal duration with the law, but in neither caſe can it be of longer duration; to ſuppoſe it, appeared to him to be abſurd. When it is ſaid, "The judges ſhall hold their offices during good behaviour," the firſt and obvious meaning is, that it ſhould be theirs during life, or as long as there was ſuch an office, unleſs they reſigned or where removed for miſbehaviour, that it ſhould not be taken from them to be given to another. In ſuch queſtions of conſtructions as to the meaning of words and phraſes it is very difficult to prove that they muſt mean preciſely this and nothing elſe; it was ſatisfactory to him that this conſtruction fully ſatisfies the meaning of the words; without doing violence to the other parts of the inſtrument, it does not interfere with and deſtroy the words which give the legiſlative power to Congreſs. It is known that the importance of the integrity of legiſlative power, which is ſometimes ſpoken of under the expreſſion omnipotence of parliament, is at leaſt as favourite a part of the theory which we have been moſt in the habit

of conſulting, as the independence of judges, particularly in the extent which it is now propoſed to give it. This clauſe is ſpeaking of the *tenure* of the office and not of the *existence* of the office, that had been aptly diſpoſed of in that part of the inſtrument, which is on that ſubject, and is to be ſought for among the legiſlative powers and prohibition of power.

On the *tenure* of office, the conſtitution ſays, the Preſident ſhall hold his office for four years, ſenators for ſix years, &c. judges during good behaviour.

All theſe ſuppoſe the office to be in exiſtence, but are not deſigned to authoriſe the functionaries to hold over beyond that period, or to affect the power which is given to change thoſe inſtruments. The judges ſhall have the higheſt poſſible tenure, they ſhall hold their offices as long as the conſtitution of the country, and the conſtitution of their offices exiſt, if they behave well. He could not conſider the conſtitution as contemplating their ſurviving or holding beyond the exiſtence of the conſtitution of the country, or the conſtitution of their office. It would be a very ſtrained conſtruction to conſider that as intended. It would alſo be a very uſeleſs one; it goes to prevent the legiſlature from the right to make laws on the ſubject, as the circumſtances of the country may require, without which he did not ſee how the government could be carried on, and yet does not ſecure the judges from intolerable proſecutions and oppreſſions of thoſe

laws; in ſhort it does all the harm and does no good.

The more violent partizans of this theory or independence of judges ſay, that our conſtruction deſtroys the principle altogether; that the conſtitution might as well have ſaid nothing; that it leaves the judges entirely at the mercy of the legiſlature. This is arguing from the abuſe of power, and ought not to be admitted; it is not to be preſumed that when a conſtitution or a judiciary ſyſtem is well adapted to the circumſtances of the country, and gives ſatisfaction to the people, that it will be lightly changed or altered, or that it can be put down or deſtroyed merely to get rid of the officers; they may abuſe any other article of power to as great exceſs; they might preſcribe intolerable duties, as has been obſerved, and thus oblige the judges to reſign, &c. He would not pretend to deny but that the words might be taken in a more extenſive ſenſe, but he thought this the moſt natural, and ſufficient to ſatisfy them, and that there are not many pages in the conſtitution in which as probable and promiſing a criticiſm as the one that has been made on this occaſion might not be taken and introduced to diſturb and unſettle our practice. It is to be recollected that this theory of the independence of judges has already been carried by us farther than any body elſe has carried it, in placing them beyond the reach of removal, on the joint addreſs of both branches of the legiſlature; he was not convinced

that any ſo important effects had flowed from it, or that experience had as yet determined any thing ſo certain and encouraging on this theory, as, at this time, to warrant a further extenſion of it by conſtruction.

Another meaning which has been given to the words is, that the legiſlative power on this ſubject ſhall remain entire to inſtitute and ſhape the courts as they may think proper, with the one exception, that "there muſt be one Supreme Court;" but that judges once appointed, are authoriſed to hold their pecuniary emoluments during life, unleſs removed by impeachment. This conſtruction does not go to defeat the propoſed reſolution; the reſolution ſays nothing about what ſhall be done with the preſent judges; they may get their full ſalaries during life, if it is their conſtitutional right. He thought that of very ſmall importance in the argument, and hoped thoſe gentlemen would not be prevented by it from voting for the reſolution, if they thought it had been ſufficiently ſupported by arguments derived from the nature of the ſubject, which he thought was the true ground on which the queſtion ought to turn.

But a much more extravagant conſtruction on thoſe words, he ſaid, had been taken, that the words, "they ſhall hold their offices during good behaviour," were to be conſidered as a limitation of the power of the legiſlature, in creating and faſhioning their offices—that the offices are to be conſi-

dered as *theirs*, as a *vested right*, that it would be abſurd to ſay, they ſhould *hold* their offices, that they were a veſted right, &c. when they might any day be taken away by a change of the conſtitution, or a repeal of the law which creates it, and which is the conſtitution to that office; that you ſhould not kill the man, but might ſink the ſhip on which his life depended. Some alſo lay particular ſtreſs on the words "their offices" as meaning a particular and definite ſyſtem of duties, which the judges had received from the government, by the *contract*, that the legiſlature had no right greatly to vary or change this definite ſyſtem of duties, ſo as to make it very burdenſome, and oblige them to reſign, and in that way affect this all-important proviſion of the conſtitution, the independence of judges. This appeared to him ſo extravagant, and inevitably led to ſuch a train of conſequences, as had been fully ſtated by thoſe who had gone before him; he was ſo confident it could not be adopted and practiſed upon, that he ſcarcely apprehended any danger from it. To be ſure, if the offices are theirs, a veſted right, a matter of contract between them and the government, there is an end to all power in the legiſlature to change them or even legiſlate upon them, without the conſent of the judges; they muſt ſurvive the law creating them; and they muſt alſo ſurvive, even though the conſtitution itſelf ſhould be changed. If any conſtruction does violence to the conſtitution, and defeats

its moſt eſſential proviſions, this is the one, and needs to be made the ſubject of all the warnings which had been addreſſed to us on thoſe important grounds.

Mr. WRIGHT of Maryland, obſerved, that he had been called forth, early in this debate, rather to defend the ſtate he had the honour to repreſent, from the unkind imputation of "a violation of her conſtitution," (in which he flattered himſelf, he had ſucceeded even to the ſatisfaction of the honourable gentleman himſelf, who, he preſumed, from miſinformation, had been induced to make it), than from any deſire at that time, to enter into the diſcuſſion of the merits of the reſolution then under conſideration of the Senate. He therefore hoped, he ſhould now be indulged with a few obſervations on the merits of the reſolution before them, and although it had already occupied ſo much of the time of the Senate, and had been ſo ably and ſo fully diſcuſſed by honourable gentlemen of great abilities and experience on both ſides, yet he ſhould preſume to call their attention to ſuch prominent features of the caſe, as had been impreſſed on his own mind.

This ſubject has been brought before us in the impoſing ſhape of a recommendation of the Preſident of the United States, the national, the conſtitutional organ of the government, in his official meſſage to Congreſs on the ſtate of the Union; a duty impoſed on him, by the expreſs letter of the

conſtitution ; a duty he was bound by the moſt ſolemn obligations, conſtitutionally to diſcharge ; a duty that renovated and enlightened America had too recently ſelected him to diſcharge, readily to believe he would unconſtitutionally abuſe.

Sir, this ſubject has been ſubmitted to the conſideration of the Congreſs of the United States, a body ſelected for their patriotiſm, their wiſdom, and their virtues, the conſtitutional organ of the legiſlative will of the nation, in order to inform their minds, and point their attention to the great and important ſubjects on which they were convened to deliberate, on the honeſt diſcharge of which every thing valuable to America depends. This ſubject had not been brought before them in a manner to coerce a haſty or an immature deciſion on the ſubject, nor had it been left on the vague foundation of ſuggeſtion or conjecture, but it had been brought before them in a manner that impoſed deliberation, and had been ſupported by documents, that had paraliſed and almoſt ſealed the lips of oppoſition on the point of its expediency.

But, however impoſing the manner, or however incontrovertible the matter on which the reſolution was predicated, yet, honourable gentlemen are found on this floor to oppoſe it as a meaſure of that adminiſtration they feel indiſpoſed to ſupport, particularly as it implicates the policy of the late adminiſtration, and indeed a meaſure which was the

work of their own hands, which mankind at all times have been prone to admire, and however convinced of their errors, have with great reluctance been brought to confeſs them.

Sir, it would ſeem by the courſe of the arguments on the preſent queſtion, that we had it in contemplation to break down the federal judiciary altogether, and to ſubvert *ancient* foundations, and as if the agents or *perpetrators* (as the gentleman from Connecticut has politely called them,) with poluted hands intended to deſtroy that conſtitution they had ſworn to ſupport, and to leave the community without a judiciary to inforce obedience to the laws, whereby the ſtrong might give law to the weak, the rich oppreſs the poor, and the artful and the wicked impoſe on the weak and uninformed; and all with impunity, and indeed would induce a belief, that they alone had either life, liberty or property to be protected. But the fact is, that the old judiciary ſyſtem, that has anſwered every neceſſary purpoſe from the commencement of the government, remains inviolate. It is the new ſyſtem eſtabliſhed at the laſt period of the laſt ſeſſion of Congreſs, a ſyſtem whereby ſixteen new judges were introduced as circuit judges, ſeveral of whom had been promoted to be circuit judges from diſtrict judges, to make room in the diſtrict courts for gentlemen of Congreſs who aſſiſted to eſtabliſh this new ſyſtem, and who therefore were by the conſtitution diſqualified to accept that office,

created during the time for which they were elected to ſerve in Congreſs, and as he had ſaid before, thereby indirectly minted offices for themſelves and the favourites of an expiring adminiſtration—a meaſure reſiſted by the republicans in both branches of the national legiſlature; a meaſure which was carried into operation by thoſe from whom the people have revoked their confidence, at the moment their power was paſſing away, at a time when the buſineſs in the federal courts had declined nearly one half, and when the ſedition law had ceaſed to be an engine to reſtrain the liberty of the preſs, and to puniſh men for the expreſſion of their honeſt political opinions—was all that was intended to be repealed.

Here let me call your attention to the letter of the reſolution, which on reading it will be found to extend no further than to the repeal of the act of Congreſs of the laſt ſeſſion, by which ſixteen new *federal* judges had been created, and a ſyſtem eſtabliſhed at the annual expence of 130,000 dollars. We are now called on, as the repreſentatives of the nation, as the organ of their legiſlative will to determine whether this law, which has been ever odious in the ſight of the people, and whoſe birth was not entirely legitimate, ſhall be repealed. We are informed by the Preſident himſelf, that it is unneceſſary, and that fact has been eſtabliſhed by the document ſubmitted to us on the ſubject of the judiciary courts of the United States. We are in-

formed alſo that on the repeal of this law and the making ſome retrenchments in the naval and military eſtabliſhments, which have been already progreſſed in, is predicated the repeal of the odious internal taxes; and in this manner and to effect this deſirable purpoſe, this ſubject is brought before us. Can we then heſitate to relieve our people from the burthen of their odious internal taxes by the repeal of this unneceſſary law? I ſhould preſume not, if governed *ſingly* by the regard to the public welfare; but we have notwithſtanding been told by honourable gentlemen on the other ſide of the Houſe, that this law ought not to be repealed:

1. Becauſe it is inexpedient.

2. Becauſe it is unconſtitutional.

Upon the firſt point, that of its expediency, he ſhould not detain the Senate longer than to obſerve, that the document on our table ſhews, that the old judiciary ſyſtem, which had been coeval with our government, and had been in operation from its commencement, had been at all times ſufficient for the tranſaction of all the judicial buſineſs of the Union; that the buſineſs in the courts had already declined nearly one-half under the old ſyſtem, even at the moment of the eſtabliſhment of the new one; alſo that it was contemplated to repeal the odious internal taxes, a conſiderable ſource of litigation; and that the more odious ſedition law had expired, which [illegible]y all knew had been a ſource of conſiderable litigation, and he was ſorry to add, had not

placed the judiciary above the reach of abuſe; but whether deſervedly or not, he *dared* not to affirm: and that the peace we had lately eſtabliſhed with France had put an end to another ſource of litigation, that of admiralty cauſes on the prize ſide of the court of admiralty. From this view of the ſubject, he himſelf was entirely ſatisfied of the expediency of the repeal, and had little doubt that every gentleman was equally ſo that *any* evidence could convince.

As to the point of its being unconſtitutional. It will be recollected, that the Preſident himſelf has recommended the repeal of this law; an evidence of its conſtitutionality of ſo high authority with the enlightened people of America, that if it ſtood ſingly on that, it would require a *federal hoſt* to ſhake it; but we know there are honourable gentlemen on this floor not diſpoſed to *confess* their reſpect for that authority on this occaſion. Thoſe gentlemen I will refer to the conſtitution itſelf, from whence, I preſume, it will appear that the power now propoſed to be exerciſed is clearly delegated.

In the 8th ſection, 9th article, Congreſs ſhall have power to conſtitute tribunals inferior to the ſupreme court. In the 7th article, Congreſs ſhall have power to eſtabliſh poſt-offices and poſt-roads. Theſe are the preciſe expreſſions by which Congreſs acquire the power over the ſubjects of the inferior courts, and of the poſt-offices; there is no other authority given them but by theſe articles; there is

no expreſs authority to aboliſh either courts or poſt-offices, but the ſubjects are reſpectively given to Congreſs to exerciſe their legiſlative will upon, in ſuch manner as ſhould beſt promote the public good. I would aſk gentlemen if Congreſs have not eſtabliſhed poſt-offices without number, and aboliſhed them at their will and pleaſure, by virtue of their authority under the 7th article above ſtated; and I ſhould be glad to hear from whence the authority to aboliſh poſt-offices is derived, unleſs from the article that *only* expreſsly authoriſes their eſtabliſhment, and whether the authority given over the ſubject has not in all paſt times been held ſufficient to juſtify the aboliſhing as well as eſtabliſhment of poſt-offices. He then called on the gentlemen in the oppoſition to point out a difference between the powers of Congreſs over the inferior courts and the poſt-offices, and to ſhew how it was that Congreſs could aboliſh the poſt-offices, under an authority to eſtabliſh them, and not to aboliſh the inferior courts under the like authority to eſtabliſh them, and how the ſame phraſeology that is uſed in veſting the power in Congreſs over the poſt-offices and inferior courts, can be tortured ſo as to authorize the aboliſhing poſt-offices, and not to authorize the aboliſhing the inferior courts. But we have been told, that by the 1ſt ſection of the 3d article, this buſineſs is to be explained; let us examine it. The judicial power of the United States *ſhall* be veſted in one ſupreme court, and in

ſuch inferior courts as Congreſs *may* from *time* to *time*, ordain and eſtabliſh. The judges of the ſupreme and inferior courts ſhall hold their offices during good behaviour. By this it has been inſiſted, that the judges of the inferior as well as the ſuperior courts, hold their offices during good behaviour, and that we have no power to paſs this repealing law, becauſe it would operate to diſmiſs the judges.

He ſaid, that Congreſs, by an extraordinary legiſlative act, with the concurrence of two-thirds of the ſtates, had a power to aboliſh even the ſupreme court. He aſked, in ſuch caſe, what would become of the judges? Would they be intitled to hold their offices as judges, when in the eye of the conſtitution there was no ſuch office? No, certainly! The conſtitution meant, and could mean nothing elſe, than a judge under the conſtitution; and the moment the conſtitution diſcontinued the office, the judge under the conſtitution ceaſed to have a political exiſtence, and would not be known to the conſtitution as a judge. So he concluded, by an ordinary act of legiſlation, the Congreſs might repeal the law erecting the inferior courts, and on the repeal of the law, from whence the legal exiſtence had been derived, conſtituting them judges, he ſhould be glad to hear how they could be judges; that being created by the law, they derived their exiſtence from the law, and could not, as judges, ſurvive it. The conſtitution means a judge known

to the law; and not the man who had been a judge, after his political diſſolution. He inſiſted that Congreſs can eſtabliſh legiſlatively a court, and thereby create a judge; ſo they can legiſlatively aboliſh the court, and eventually annihilate the officer; that the inferior courts are creatures of the legiſlature, and that the creature muſt always be in the power of the creator; that he who createth can deſtroy. But we are aſked by the honourable gentleman from New-York, in anſwer to this, "has a man a right to deſtroy his own children." Mr. WRIGHT ſaid, he had been taught to believe, that man had not been his own creator, but the happy inſtrument of creation. But this power that is now denied to us, had been exerciſed by the gentlemen themſelves, in the very law that is now intended to be repealed. You will ſee, by adverting to that law, the diſtrict courts of Tenneſſee and Kentucky, are expreſsly aboliſhed, and the office of a diſtrict judge for the ſtates of Tenneſſee and Kentucky, annihilated. But we are told by honourable gentlemen, that there was a circuit court eſtabliſhed, conſiſting of theſe two ſtates, and another ſtate, and that the judges of the diſtrict courts were appointed judges of the circuit courts, and *accepted* their commiſſions as ſuch; and therefore, they ſay, that they did not deſtroy the office of the diſtrict judges of Tenneſſee and Kentucky. He aſked, if each other ſtate had not diſtrict courts; he aſked if there had not been circuit courts eſtabliſhed in

all the ſtates by that law, and if the diſtrict courts of the other ſtates had not been continued; and can it be ſaid that a diſtrict court compoſed of a ſingle ſtate, as in the caſe of Tenneſſee and Kentucky, is not aboliſhed, and the office of a diſtrict judge deſtroyed, becauſe in the ſame law a circuit court is eſtabliſhed, and the diſtrict judges appointed circuit judges? Can it be ſaid in fact that it is the ſame office, when the duties are extended to three ſtates, to ſit in three places, as it was when limited to one ſtate and one place; or will gentlemen tell us that if the judges of the diſtrict courts had refuſed to act as judges of the circuit courts, whether they would have been ſtill judges of the diſtrict courts after they had been aboliſhed? Or will they ſay that the commiſſion of a diſtrict judge, limiting his juriſdiction to a ſtate, is the ſame as that of a circuit judge extending it over three ſtates? And whether the law *authorizing* the commiſſion over three ſtates ought not to precede the commiſſion veſting that authority.

Mr. WRIGHT aſked, if Congreſs, when exerciſing their authority in the firſt inſtance, to eſtabliſh inferior courts, had not the right to limit their continuance to any period, and that at the end of that period, if the law was not continued, what would be the ſituation of the judge appointed under the law, would his authority continue? Certainly not. And will any gentleman contend on this floor, that if a former Congreſs had a right to give limitation

to the continuance of a law, that the preſent Congreſs have not the ſame authority to limit or to diſcontinue. Honourable gentlemen, however ingenious, will find themſelves, he preſumed, unable to ſolve theſe difficulties, or to reconcile theſe inconſiſtencies; for his part, the authority by which this ſubject had been brought before them, the recommendation of the Preſident, had been powerful. The letter and ſpirit of the conſtitution, when recurred to, had eſtabliſhed him in that opinion, that they were juſtified in the meaſure now propoſed, and the practice of Congreſs in aboliſhing the diſtrict courts of Tenneſſee and Kentucky, ſatisfied him, that it was no new idea, no new exerciſe of power; and further, that nothing in the form of a conſtitution, can be drawn ſo guardedly, that gentlemen may not be found to differ on its true conſtruction; and even, as in the preſent caſe, at different times and on different occaſions, differ themſelves in the conſtruction of the ſame inſtrument. If all theſe conſiderations were not ſufficient to ſatisfy gentlemen, and we were obliged to recur to the principles on which this inſtrument muſt have been eſtabliſhed, we ſhall find, that we do not in any degree violate them by the conſtruction we put on them. If the Britiſh government is recurred to, from whence the ſtate governments borrowed their principles, or if the ſtate conſtitutions are reforted to, we ſhall find thoroughly incorporated the principles for which we contend, that the judges

are independent only of the executive, but never above the law giving them their political exiſtence. He admitted, with the gentleman from New-York, that judges ought to be the guardians of the conſtitution, ſo far as queſtions were conſtitutionally ſubmitted to them; but he held the legiſlative, executive, and judiciary, each ſeverally the guardians of the conſtitution, ſo far as they were called on, in their ſeveral departments, to act; and he had not ſuppoſed the judges were intended to decide queſtions not judicially ſubmitted to them, or to lead the public mind in legiſlative or executive queſtions, and he confeſſed, he had greater confidence in the ſecurity of his liberty in the trial by jury, which had in all times been conſidered as the palladium of liberty, than in the deciſion of judges, who had, at ſome time, been corrupt. For his part, he did not wiſh to break down the judiciary or the judges, or to violate the conſtitution; though he confeſſed, he ſhould feel as ſecure in the deciſion of the ſtate judges, in even federal queſtions, with an appeal to the ſupreme federal court, as in the preſent judges; and indeed the conſtitution, in the 4th article, 2d ſection, which impoſes on all ſtate judges the oath to obſerve the conſtitution and laws of the United States, always ſeemed to him to conſider the ſtate courts in a certain degree judges of federal queſtions. Nor had he ever been able to raiſe a doubt in his own mind as to the propriety of truſting ſtate judges to decide federal queſtions, with an appeal to a

federal court; when he conſidered that ſtate juries had always been truſted to decide all queſtions, from whoſe deciſion there was no appeal; and indeed the ſtate courts, at all times, had been the only judicial guardians of our rights, whoſe integrity had never been impeached. The gentleman from New-York is ſo careful of the conſtitution, that he wiſhed it ſecured by walls of braſs. Does he apprehend others wiſh to violate it, and himſelf its excluſive guardian, and that other gentlemen do not hold themſelves equally bound to protect it, or have nothing worth protecting? For his part, he had ſworn to protect it, and never ſhould, intentionally, violate it; but he believed that no human invention could make it more ſecure than it was, depoſited in that hallowed temple, and locked up by the key of our holy religion.

Mr. HILLHOUSE, of Connecticut, obſerved, that he oppoſed the paſſage of the law now propoſed to be repealed; but for the purpoſe of getting rid of a law which he did not like, he could not feel himſelf juſtified in tearing out a leaf of the conſtitution. In attempting to correct an error of a former legiſlature, we ſhould be careful not to commit one, in its conſequences, more fatal than the firſt. He did not heſitate to declare it as his opinion, that not only the law under conſideration, but every other that had been paſſed on that ſubject might be repealed; but he was ſurpriſed to hear it ſaid that this could be done in a way that ſhould

deprive a judge, duly appointed, of his office and ſalary. The words of the conſtitution are direct and poſitive, that "the judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour; and ſhall at ſtated times, receive for their ſervices a compenſation which ſhall not be diminiſhed during their continuance in office."—The conſtitution no where ſays, that the judiciary ſyſtem of the United States, when once formed, cannot be altered, the courts new organized, old ones put down, and new ones created; that is left to legiſlative diſcretion, under this reſtriction only, that there ſhall always be a ſupreme court, and that no judge ſhall be deprived of his office or ſalary. To aboliſh a court, without deſtroying the office or ſalary of the judge, has not in practice been found difficult. Moſt of the ſtates, where judges hold their offices during good behaviour, have been in the habit of doing it; the United States have done it; but in no inſtance has a judge been deprived of his office or ſalary, unleſs in that ſtated to have recently happened in Maryland; which, if the facts are rightly reported, ought not to be *respected*, much leſs *imitated* by this Senate. By a law of Maryland, courts had been eſtabliſhed and judges appointed, who by the conſtitution hold their offices during good behaviour.—This law was repealed, and during the ſame ſeſſion of the legiſlature, a new law was paſſed eſtabliſhing the ſame courts, and almoſt in the ſame words of the

former law. What could be the object of this repeal? Surely none other than the turning the judges out of office. Could that be leſs a violation of their conſtitution than the paſſing of a law directly removing from office the ſame judges? It is too abſurd to ſay that indirect means may be uſed to effect what might not be done by a direct and poſitive law, or is abſolutely forbidden by the conſtitution to be done at all.

Here Mr. HILLHOUSE ſtated the various laws of Virginia, in which they new modelled or altered their judiciary ſyſtem, by which, ſaid he, it appears, that this antient and important ſtate has ever been careful not to violate the principle here contended for, and had, in no inſtance, deprived a judge of his office or ſalary.

To juſtify ſuch a conſtruction of the conſtitution as will warrant a repeal, it is ſaid, if a law may paſs one ſeſſion authorizing the appointment of ſixteen judges, who cannot be removed, it may be extended to ſixteen thouſand—arguing that, becauſe the power may be abuſed, that, therefore, it does not exiſt. But will this argument do? Let it be teſted by other parts of the conſtitution. Congreſs are not limited in their power to borrow money, or raiſe armies, which, during the period of one Congreſs, might be uſed to the total and irretrievable ruin of the nation. The treaty making power is veſted in the Preſident and Senate, a power which has been recently exerciſed in ratifying the conven-

tion with France, by which is relinquiſhed the claims of citizens of the United States, for ſpoliation, to a great amount; there is nothing in the conſtitution that reſtrains this power or the abuſe of it; or that would have prevented the introduction of an article into this ſame convention, ſtipulating the payment to France of an annual tribute of twenty or thirty millions of dollars, a ſum abſolutely ruinous to the United States. The ſame remarks will apply to ſundry other powers; yet it will not be ſaid, that becauſe theſe powers are liable to this abuſe, that, therefore, they do not exiſt.—There never was a conſtitution, or form of government which contemplated it as a poſſible caſe, that the legiſlative power ſhould be lodged in the hands of madmen, or which attempted to provide againſt ſuch an event. Should this be the unhappy ſituation of any country, there would be no remedy but a reſort to revolutionary principles. From whom is this abuſe of power reſpecting the judiciary apprehended? The legiſlature; the ſame legiſlature in whoſe hands we are told the rights and liberties of the people are perfectly ſafe.

In no part of the conſtitution is the Preſident directly veſted with power to remove any one from office; on that ſubject, it is ſilent; the reſtriction, therefore, in relation to the judges, cannot refer to the Preſident; it muſt have been intended to ſecure them againſt every department of the government. Any other conſtruction would render the reſtriction fu-

tile, and wholly deſtroy the independence of the judges, who would be liable to be removed from office at every ſeſſion of Congreſs. All that would be neceſſary, would be a repeal of the law under which they hold their appointments, which, if the principle of this reſolution is admiſſible, may be done without any violation of the conſtitution. It will certainly carry us to that extent. It was, moſt certainly, the intention of the convention who framed the conſtitution, to ſecure the independence of the judges; it was thought, by every one, to have been done in a moſt effectual manner, until this new diſcovery, which is of very recent date, of reſorting to a repeal of the law. The independence of judges is, certainly, very important to enſure a due adminiſtration of juſtice, which, in every well regulated government, is conſidered as a matter of primary importance. Other departments of the government may be more ſplendid, but courts of juſtice come home to every man's habitation; their importance is felt by every individual, to them he looks for ſecurity and the protection of his perſon and property.

The conſtitutions of ſtates are limited in their operation, and may be eaſily altered or amended; different, far different is that of the United States. This is the bond of union between ſixteen ſovereign independent ſtates, ſpread over a country of vaſt extent, influenced by different views and intereſts; watching, with a jealous eye, the movements of the

general government; and whom it has been found difficult, and will grow more and more difficult, to unite in any agreement to alter or amend this conſtitution, and which, once deſtroyed by any important or flagrant violation, it is my firm belief, will never be renewed.

The Senate then adjourned till Monday, when the further conſideration was poſtponed till Tueſday the 19th. Mr. WHITE, of Delaware, opened the debate on that day.

I ſhall be believed, ſir, when I aſſure you, that nothing ſhort of the higheſt ſenſe of duty, and the great reſponſibility of the ſeat I have the honour to hold, could enable me to overcome the extreme embarraſſment I feel in riſing to preſent my ſentiments to the Senate, on this the moſt important queſtion ever before them. I preſume not to think, after the ſuperior eloquence and talents that have been here diſplayed, it will be in my power to caſt on the ſubject a ſingle additional ray of light. Already, ſir, has it been exhauſted, and, were I to conſult my own feelings only, I ſhould not now have to treſpaſs upon your patience, whilſt, in the execution of a ſacred duty, I paſs, haſtily, over part of the ſame ground, that has before been trod by ſome of my honourable friends, making ſuch additional remarks as might have eſcaped them. In the courſe of my obſervations I ſhall confine myſelf to the ſame diviſion of the queſtion purſued by the honourable mover, and which it naturally preſents.

1ſt. As to the expediency. 2dly. As to the conſtitutionality of the meaſure propoſed in the reſolution.

That ſome ſyſtem of courts is neceſſary in our country for the execution of laws and the adminiſtration of juſtice, gentlemen moſt hoſtile to the preſent eſtabliſhment will readily admit. It is acknowledged too, on the other ſide of the houſe, that the expenſes of the preſent judiciary are unworthy your conſideration; that it is one of the leaſt evils attending it; but, ſay gentlemen, it is upon too large a ſcale, it is uſeleſs, it is dangerous.

Sir, upon the original plan of the courts, it was found impoſſible that the ſix preſiding judges, traverſing this extenſive country, and holding their ſeſſions in every ſtate, could either do juſtice to the buſineſs, or at their advanced periods of life, withſtand the fatigue of ſuch ſevere and conſtant exerciſe, ſome alteration, ſome amendment of the ſyſtem was found indiſpenſable; the intereſt of the country demanded it of thoſe in office, and it is for the execution of this duty that their political memories are now ſo illiberally reviled. It is well known, ſir, that the United States are increaſing in population, commerce, and wealth, beyond any former example; that new ſubjects of litigation are every day finding their way into your courts, and ſhort-ſighted indeed would have been the founders of the eſtabliſhment now under conſideration, had they confined their views to the preſent time. Previous to the paſſing

of this law, no man who could avoid it, would commit his buſineſs to your courts, their arrangement amounted almoſt to a denial of juſtice; ſuitors preferred taking their chance in the ſtate courts to the delay and expenſe attendant upon the proceedings in thoſe of the United States. The conſtant change of preſiding judges at every ſucceeding court, totally unacquainted with what had been done by their predeceſſors, and introducing new rules of practice, together with the unavoidable ſhortneſs of the terms, hung up the buſineſs to the great inconvenience and injury of many ſuitors, and muſt in a ſhort time have rendered that ſyſtem not only uſeleſs, but even a nuiſance to the country; people could not be expected to apply for juſtice to a bench where time was not given to adminiſter it.

Theſe ſir, among many others, are ſome of the reaſons why buſineſs had not been originated in your courts antecedent to the preſent law. Theſe are the reaſons, ſir, why their dockets are now ſo low; and permit me to ſay, that the extracts contained in this document, even ſuppoſing them correct, which happens to be far from the fact, prove nothing; they were taken at a time when the preſent courts had ſcarcely commenced their operations, immediately after the firſt circuit, when no gentleman will undertake to ſay, there had been any thing like an opportunity at a fair experiment of them. And now, ſir, before the people of the country have even become acquainted with the

ſyſtem, and before any man, unleſs by the power of inſpiration, can judge of its utility, it is in a moment to be daſhed to pieces. Why, I aſk, ſir, this precipitance? Do gentlemen fear that if the meaſure is delayed until another ſeſſion the experiment might render the ſyſtem popular? And theſe hateful judges, for there is the rub, ſir; theſe hateful judges will not be ſo ſafely got rid of. I hope gentlemen, at leaſt for the preſent, will quiet their fears; they need not, I can aſſure them, apprehend any immediate danger from this mighty army of judicial veterans, ſo terrible in ſound; they are now, I believe, ſir, in winter quarters; and even if continued in ſervice another year, could not totally ruin and enſlave the country, or, as has been indeed very feelingly expreſſed by the honourable gentleman from Georgia on my right, (General JACKSON,) lay our virtuous citizens in irons. The honourable gentleman from the ſame ſtate, on my left, (Mr. BALDWIN,) has been pleaſed to tell us, that the ſame juſtice was not to be expected from the courts of the United States as from thoſe of the individual ſtates, becauſe the judges of the former cannot have a ſufficient knowledge of the uſages and cuſtoms of the country, and their jurors not being of the vicinage, can know nothing of the parties or their ſuits. I admired much, ſir, the ingenuity and candour of that gentleman, but this was certainly among the leaſt ſolid parts of his argument; unhappily the very reaſons he adduced

proved directly the oppoſite of what he wiſhed. Judges, ſir, ſhould be governed only by the law of the land, they carry it with them; they are its expoſitors, and are ſworn to decide according to it, and have nothing to do with the uſages and cuſtoms of the neighbourhoods where they may happen to ſit. And I have always underſtood, that the greateſt poſſible ſecurity for the impartiality of jurors, is their being entire ſtrangers to the contending parties, and totally ignorant of their cauſes until empannelled to decide them; they then view nothing but the naked facts ariſing out of competent teſtimony, and are influenced only by law and juſtice. And ſuch, ſir, is the frailty of our nature, that the beſt man in ſociety may be acting under the influence of politics, friendſhip, paſſion, or prejudice, when he ſuppoſes himſelf governed by the pureſt motives. Well aware though, as I am ſir, that nothing ſhort of the conſtitution itſelf, and I fear not even that will be ſufficient to preſerve the independence of the judiciary, from this bold onſet, I ſhall now proceed to the ſecond diviſion of the queſtion.

I admit, ſir, that the law propoſed in the reſolution to be repealed, is capable of much amendment, and it has never been denied, but that Congreſs had the power of altering it in any way, ſo as not to impair the independence of the judiciary, by touching the offices or ſalaries of the judges; this cannot be done, the words of the conſtitution on the ſub-

ject, are as explicit and certain as language can be. By the firſt ſection of the 3d article, it is declared, that "the judicial power of the United States, ſhall be veſted in one ſupreme court, and in ſuch inferior courts as the Congreſs may, from time to time, ordain and eſtabliſh. The judges, *both* of the ſupreme and *inferior courts* ſhall hold their offices during good behaviour." Does our language admit of words more poſitive than theſe, ſir? Not a letter nor even a comma is wanting to complete the meaning we aſſign to them; and I aſk gentlemen to point out any other words that the framers of this inſtrument could have uſed, that would have been leſs equivocal, or that could import with more certainty the conſtruction we now contend for; it has not yet been done, and I defy them to do it; and if a different conſtruction can be given to theſe words this written conſtitution is not worth a ſous; it is to all uſeful purpoſes a mere chart-blanch upon which a legiſlative majority may write what they pleaſe.

In a preceding part of this conſtitution, power is given to Congreſs, to conſtitute tribunals inferior to the ſupreme court; by the act to which the reſolution on your table refers, they did ſo, and in purſuance of that act, the Preſident of the United States iſſued commiſſions to certain gentlemen as judges, they accepted of thoſe commiſſions, and at the moment of their becoming judges, the conſtitution attached to their offices, and guaranteed to them the ſame independence and permanency as

judges of the ſupreme court; for it makes no diſtinction. "Judges both of the ſupreme and inferior courts ſhall hold their offices during good behaviour" On the acceptance of their commiſſions, a complete contract was formed between them and the government; the conſtitution told them, that the tenure of their offices ſhould be their own good behaviour; the law told them, that for their ſervices they ſhould receive a certain ſum annually; theſe were the terms, ſir, that tempted them to leave their other purſuits in life and carry into execution this contract; and it is a contract that no power on earth can diſſolve, but by firſt altering this conſtitution in the manner it directs, or by violating it; and any law, attempting its diſſolution, operates retroſpectively, is an ex poſt facto law, and in that reſpect too, unconſtitutional.

But, ſir, in order to place beyond a queſtion, for ever, the entire independence of the judiciary, the convention went ſtill further, and in this ſame ſection, nay, in this ſame ſentence, for they followed the thing cloſely up, they declared, that theſe judges, viz. of the ſupreme and inferior courts, "ſhall at ſtated times, receive for their ſervices, a compenſation which ſhall not be diminiſhed during their continuance in office." And under the words of this conſtitution, we have juſt the ſame power to diminiſh their ſalaries whilſt they continue in office, as we have to remove them from their offices and ſtrip them of all ſalary; they hold their offices dur-

ing good behaviour, and the full amount of their ſalaries whilſt in office by the ſame ſtrength and power of language; for can it be ſaid, ſir, that the words "ſhall not" are more prohibitory, than the word "ſhall" is mandatory? Certainly not. Theſe latter words apply eſpecially to Congreſs: they muſt have been introduced for the expreſs purpoſe of fixing and marking the bounds of legiſlative authority towards the judiciary. And it would ſeem as if the wiſe framers of this inſtrument had feared, not, ſir, that Congreſs would ever preſume themſelves authoriſed abſolutely to remove any judges from their offices without cauſe, as is contemplated in that reſolution, for ſuch an idea could never have entered their minds, after they had the moment before expreſsly declared, in ſo many words, that the judges both of the ſupreme and inferior courts ſhould hold their offices during good behaviour, but that the aſpiring pride and ambition of legiſlative power, in ſome unhappy moment of intemperance or party warmth, might attempt to impair the independence of the judiciary in another way, by aſſuming a diſcretionary power over the ſalaries of the judges, and thus rendering them dependent upon legiſlative pleaſure for a precarious ſupport, make them ſervile and corrupt.

Gentlemen acknowledge that the judges of the ſupreme court are out of their reach (thank heaven that they happen to think ſo, or they too would accompany their brethren) but ſay they, the judges of

the inferior courts are creatures of our own, and we can do with them as we pleaſe. Let me admit, ſir, for argument ſake, the poſitive meaning of the conſtitution to the contrary notwithſtanding, that theſe words, "The judges, both of the ſupreme and inferior courts ſhall hold their offices during good behaviour;" are equivocal. What reaſons can gentlemen have to believe, upon what poſſible grounds can they preſume, that the makers of this conſtitution did not intend to place the judges of the inferior courts upon the ſame independent footing as thoſe of the ſuperior courts; do they not belong to the ſame great department of your government; intended to be kept ſeparate and diſtinct from the other two great departments? Is not their independence equally important to the faithful adminiſtration of juſtice? Certainly, ſir, and if poſſible more ſo; for it is to them the people, in moſt inſtances, muſt firſt apply for juſtice, and a vaſt proportion of the moſt important buſineſs that paſſes through their hands, is never carried into the ſupreme court.

As to the outcry that has been raiſed about ſixteen hundred, or ſixteen thouſand, or ſixteen millions of judges if gentlemen pleaſe, calculating on the abuſe of power by the conſtituted authorities in the uſe of it, the honourable gentleman from Connecticut has ſo fully and unanſwerably replied to it, that I ſhall make no obſervations on the ſubject.

The gentleman from Georgia, on my right, (General JACKSON) has told us, that the conſtitution cannot be altered in any other way than by two thirds of Congreſs agreeing to it, and then, very emphatically, aſked, will two-thirds now agree? I hope not, ſir; but, becauſe a ſufficient number of us cannot agree upon altering it conſtitutionally, will gentlemen force their way through it by violence, in order to get at theſe judges? The ſame honourable gentleman has been pleaſed to compare this ſyſtem, and theſe judges, to a cotton machine; when done, if it ſhould not work to ſuit the maker, he tears it all to pieces and makes a new one. Are we at liberty, to infer from this, ſir, that the preſent judges cannot be made to work to ſuit the preſent rulers, and that this ſyſtem is to be demoliſhed, to diſplace them, in order to make a new one, and ſeat upon your benches of juſtice creatures more pliable? I hope not, ſir, I am ſure ſuch cannot be the views of any honourable gentleman.

It has been, day after day echoed, and re-echoed, from one ſide of this chamber to the other, that this law was one of the laſt expiring acts of the former adminiſtration, that the legiſlature had no right to paſs it becauſe they knew it would be repealed. What, ſir, are we told that a majority of the laſt Congreſs had no right to paſs a conſtitutional law? This is novel doctrine indeed; and were they to omit doing good, becauſe they had reaſon to believe their ſucceſſors would do evil? I acknow-

ledge, ſir, that the eſtabliſhment of this judiciary ſyſtem was one of the laſt acts of the former adminiſtration, and it was the very beſt act; the deſtruction of it is likely to be one of the firſt acts of the preſent adminiſtration, and I pray God that it may be the worſt, but, from ſuch a beginning, the end is indeed incalculable.

Sir, theſe judges may, by the ſtrong arm of legiſlative power, be driven from their ſeats; not their own unimpeachable integrity, their virtue, and their learning, or even the ſacred barriers of the conſtitution itſelf may be ſufficient to avert their fate, but remember, though advanced in years, many of them will live to ſee, what the gentleman from Maryland has called, the efflux of paſſion and reflux of reaſon—they will live to ſee the people of this country, review, with horror, the preſent attempt, and if, till then, they ſhould happily preſerve their peace and liberties, wonder how it has happened.

I will now, ſir, in concluſion, notice, in a ſtyle that it deſerves, the language which the gentleman from Virginia, in the diſcuſſion of this queſtion, applied to the ſtate of Delaware; language unworthy of this floor. He tortured an expreſſion of my honourable friend from New-York, to furniſh himſelf with an opportunity of travelling far out of the ſubject, in order to inſult the honour of the ſtate I belong to. After ſpeaking of the ſuability of ſtates, he obſerved, that "he ſhould feel the ſame intereſt for any ſtate, large or ſmall, whether it were the

little ſtate of Delaware herſelf, or the ſtill more inſignificant republic of St. Marino."—The ſpeech is not yet in print, but if I am wrong the gentleman will correct me. Mr. MASON explained; he did not mean, by what he ſaid, any thing derogatory to the ſtate of Delaware; on the contrary he entertained a high reſpect for that ſtate. Mr. WHITE. I hope, Mr. Preſident, I may be further indulged. I did not, at the moment, diſtinctly hear what the gentleman ſaid; but now muſt inſiſt on knowing, explicitly, from him, not only what he meant, but whether he believes the word "inſignificant," as uſed by him, could, in any way, apply to the ſtate of Delaware. Mr. MASON was about to explain further, when the Vice-Preſident roſe from his ſeat and obſerved, that he was not in the Senate when the gentleman from Virginia ſpoke, but if he had uſed any ſuch words, as were charged to him, they were improper, and ought not to have been permitted. That no reflections on any ſtate, or gentleman, ſhould be ſuffered in the Senate; and that he hoped the gentleman from Delaware would take no further notice of it. Mr. WHITE—As the gentleman is now pleaſed to deny his intention, in obedience to the chair, I ſhall ſpare myſelf the trouble, and his feelings the pain, of a retort that very readily preſents itſelf.

Mr. CHIPMAN, of Vermont—Mr. Preſident. After the length of time which has already been conſumed, and the abilities which have been diſplayed

in this debate, I can have but little hope of exhibiting any thing new for the conſideration of the Senate. Yet, momentous as I conſider the diciſion to be made on the preſent queſtion, involving conſequences powerfully affecting the moſt important principles of the conſtitution, I cannot perſuade myſelf to give a merely ſilent vote on the occaſion. In the obſervations which I intend to make, I ſhall endeavour, briefly, to examine ſome of the principal arguments only, which have been offered in favour of the reſolution on your table.

The arguments, in ſupport of the reſolution, have been reduced under two general heads.

1. The expediency of repealing the law contemplated in the reſolution, and

2. The conſtitutional power of Congreſs to repeal that law.

To evince the expediency of the meaſure it has been ſaid, that the ſyſtem of 1793 was adequate to all the purpoſes of the national judiciary; and that the judges, appointed under that ſyſtem, were competent to all the judicial duties required. Upon this, ſir, I ſhall briefly obſerve, that, from the number of terms of the ſupreme and circuit courts, and the immenſe diſtance to be travelled, the labour was unreaſonably great. From the labours and fatigues of riding the circuit, there could not be allowed time ſufficient for thoſe ſtuties, and for that calm and deliberate attention, which is ſo neceſſary to a proper diſcharge of the duties of a judge.

At times it has happened, that a ſupreme judge could not attend a circuit court; from this circumſtance, the court in the diſtrict to which I have the honour to belong, has more than once failed to be holden. At other times the arrival of the judges has been ſo late, that the proper buſineſs of the term could not be completed. Theſe failures occaſioned very great delay, expenſe, and vexation, to the ſuitors; and we know, that the ſame or greater failures and delays have, unhappily been experienced in other parts of the United States, failures and delays which I cannot attribute to any criminal negligence of the judges, but to the burthenſome duties impoſed by that ſyſtem, and the infirmities and accidents to which men muſt ever be expoſed, in the performance of labours ſo arduous and extenſive.

To prove that, judges of the ſupreme court muſt have been competent to all the duties of that and the circuit courts, the honourable gentleman, who brought forward the reſolution, drew a compariſon from the courts and judges in England. He has told us, that in England, there are but 12 judges, and three principal courts, that theſe courts embrace, in their original or appellate juriſdictions, almoſt the whole circle of human concerns, that the two courts of King's-bench and Common pleas, conſiſting each of four judges, entertain all the common law ſuits of 40s. and upwards, ariſing among nine millions of the moſt commercial people in the world; and that they have moreover, the reviſion of the proceed-

ings of all the ſubordinate courts in the kingdom, down to the courts of piepoudre; and that, from long experience, theſe courts have been found fully competent to all the buſineſs of the kingdom. This ſtatement, ſir, is by no means correct. In England the Houſe of Lords is the ſupreme court of appeals in the laſt reſort, in cauſes both at law and in equity. Inſtead of three, there are four ſuperior courts. The court of chancery, in which are decided all ſuits and matters in equity, including a very numerous and important claſs of cauſes. The courts of king's-bench, common pleas, and exchequer, all of which have original juriſdiction in civil cauſes; and the king's bench, beſide being the higheſt court of criminal juriſdiction, has alſo the correction and reviſion of the proceedings of all the ſubordinate courts, by writ of error or otherwiſe. The ſubordinate courts, which were barely mentioned, are very numerous. There are, in England, excluſive of Wales, more than forty counties, all of which have their ſeparate courts and judges. Some of the counties are regular franchiſes. Lancaſter, Cheſter and Durham, have their ſeparate courts, both of law and equity, which claim cognizance of cauſes and parties, within their reſpective juriſdictions, even againſt the courts at Weſtminſter. There are alſo an immenſe number of cities and towns corporate throughout the kingdom, the courts and judges of which, though more or leſs limited in their juriſdiction, entertain a vaſt variety of civil ſuits. There

are, beſides theſe, the high court of admiralty, which has an excluſive juriſdiction in maritime cauſes; the courts of the two univerſities, the prerogative court of the archbiſhop of Canterbury, the archiepiſcopal court of York, the dioceſan and other eccleſiaſtical courts, having alſo an extenſive juriſdiction, of a civil nature, in cauſes teſtamentary, and thoſe relating to the diſtribution of the goods of inteſtates.

Wales is a principality, and its courts have excluſive original juriſdiction within the territory. The great ſeſſions is the higheſt court of the principality from which a writ of error lies in the court of King's bench. The ſubordinate courts and judges are equally numerous in proportion to the territory and inhabitants with that of England. I omit the courts of conſcience and other inferior courts, and magiſtrates, almoſt without number, From this view, though imperfect, it is evident, that the compariſon attempted by the honourable gentleman, is by no means favourable to his concluſion. The population of that country exceeds in number, that of the United States by one third, perhaps more. But its whole extent, incluſive of Wales, though not comprehended in the Niſi Prius circuits, does not equal one of the circuits of the United States, under the ſyſtem of 1793; and yet that country employs, it is believed, more courts and judges, not only than the government of the United States, but than all the individual ſtates taken in addition. I do not however conceive that any advantage is to be de-

rived from the compariſon to the one ſide or the other. The ſituation of property and civil policy, numerous and complicated rights, introduced by ancient uſages and ſupported by laws and habits, and by intereſts public and private, may render a greater number of courts and judges, a more extenſive judicial ſyſtem, neceſſary in one country than in another—I think it ought to be laid wholly out of the queſtion.

It has been ſaid, that a knowledge of the local laws, of the cuſtoms and manners of the ſeveral ſtates, is neceſſary to the judges of the ſupreme courts, and cannot be diſpenſed with, on appeals in cauſes ariſing in different parts of the Union, and that the judges can acquire this knowledge in no way but by attending the circuit courts in the ſeveral ſtates. But let me obſerve, ſir, that the laws of the ſeveral ſtates, which vary from the common law, are to be found in their ſtatute books, in the deciſions of their courts and their rules of practice, for no cuſtom can as ſuch become a law, until it ſhall have been adopted by uſages and eſtabliſhed by judicial deciſions. All theſe may be made to appear on an appeal, either on the face of the record, in the pleadings, or in a ſpecial verdict, or by proper exemplification, and will afford the court in ſuch caſe a more correct knowledge, than the recollection of a judge, of what he has caught in the hurry and fatigue of the circuit.

A further objection has been urged against the continuance of the present judicial system, from the additional number of judges which it has introduced, which, it is said, may prove dangerous to the liberties of the country. An honourable gentleman from Georgia (Mr. JACKSON) cited the opinion of an author who has written on the British constitution, that the greatest political evil which could befall a country, was the existence of large judiciary bodies, and who had illustrated his ideas on that subject by instancing the parliaments of France. This observation does not, neither was it meant by the author to apply to any particular number of courts in due subordination, each consisting of a small and limited number of judges, and employed solely in proper judicial business. But it applies with force to courts composed of numerous members and forming large bodies, who in addition to their proper judicial functions, are permitted to assume an authority in the political concerns of the nation. Such were the parliaments of France, the late judicial courts of that country; particularly the parliament of Paris. The members of this body were very numerous, and as it was necessary that all royal edicts, before they were to be considered as laws, should be registered in that court, they claimed the right of deliberating and deciding on the registration of any edict offered by royal authority, and consequently of permitting or refusing it the sanction of a law. With this claim that body certainly

became dangerous to the exiſting government, and the conteſt which enſued between them and the king on this ſubject, had, no doubt, a powerful effect in precipitating the late revolution in that country. But there is nothing in all this which can be applied to the courts of the United States. Let me obſerve, ſir, that there has always appeared to me, in the ſyſtem of 1793, which is ſought to be reſtored, a very great and manifeſt impropriety.—The circuit courts were in that ſyſtem, though ſubordinate, in ſome meaſure blended with the ſupreme court, one or more of the judges of the ſupreme court being always judges of the circuit courts. This rendered the ſupreme court a fluctuating body, ſome of the judges of the ſupreme court being always excluded in the deciſion of cauſes coming by appeal from the different parts of the United States. And when two ſupreme judges held the circuit courts, of the four remaining judges who were to decide on an appeal, three might reverſe a judgment againſt the opinion of the fourth and the opinion of the two judges in the circuit court. This has always appeared to me, to ſay no more, a very glaring impropriety in that ſyſtem. The circuit courts under that ſyſtem have indeed been compared to the Niſi Prius courts in England, but the ſlighteſt attention will convince any one that they do not compare. The circuit courts in our ſyſtem are courts of original and diſtinct juriſdictions; not ſo the courts of Niſi Prius in England;

they are conſidered as a branch of the ſuperior courts at Weſtminſter, and are held by a commiſſion of aſſize uſually iſſued to a judge of one of the ſuperior courts, and an aſſociate for each of the ſix circuits into which England is for that purpoſe divided. When a cauſe in any of the ſuperior courts is, by the pleadings, put on an iſſue of fact, it is with the record ſent to be tried at Niſi Prius by a jury of the proper county; inſtead of calling up a jury to try it at bar in Weſtminſter Hall. After the trial at Niſi Prius, the verdict with the record is remitted to the court, out of which it was ſent, and there the opinion of the Niſi Prius judge and the conduct of the jury are examined and conſidered as matters paſſing in the ſame court. Here then the compariſon wholly fails; there is no ſimilarity between the two ſyſtems, except that of a judge riding the circuit.

Here, ſir, I ſhall wave any further obſervations on this part of the ſubject, and come to the great queſtion which it is neceſſary to decide. Have Congreſs the conſtitutional power to repeal the law as contemplated by the honourable mover of this reſolution? To aboliſh the courts eſtabliſhed by that law, put down the judges and aboliſh their ſalaries? It is true, as was obſerved by the honourable gentleman from Georgia (Mr. BALDWIN) that the reſolution does not neceſſarily involve that queſtion, becauſe the repealing act, if the reſolution ſhould be adopted, may be ſo modified as to avoid any diffi-

culty on the great point. But as the honourable mover avowed his intention to be an abolition of the courts, the offices of the judges and their salaries, and as the principal arguments have in the course of this debate been directed by that view of the subject, I shall be permitted to consider it on that ground.

One source of argument in favour of the measure proposed, has been derived from the powers considered as incident to every legislative body. It is said that a power to repeal all its legislative acts is inseparably incident to every sovereign legislature—that the act, the repeal of which is contemplated, is a legislative act of Congress, therefore Congress necessarily have the power to repeal it—that to admit the contrary, is to say that the power of Congress at one time is not equal to its power at another time—that a subsequent may be bound by the acts of a former Congress, contrary to a very important maxim in legislation—in a word, that it is to make the creature greater than the creator, as it denies to Congress the power over its own acts, which it has passed, and will in course put a stop to all amendments, all improvements of our laws. This doctrine, here meant to be asserted, is not in the full extent applicable to the legislative powers under our constitution. There are acts which Congress are, by that instrument, expressly denied the power of passing—there are acts which, whenever passed, Congress cannot repeal, or rather

the effects of which they cannot even ſuſpend, much leſs can they deſtroy. They are expreſsly denied the power of paſſing ex poſt facto laws; and this applies no leſs forcibly to a repealing act than to any other act—it is by its operation that the nature of the act is in this caſe determined. Every act which in its operation attempts to diveſt any right previouſly acquired, whether by a former act of legiſlation, or by any other lawful means of acquiſition, is in name, nature and eſſence, ex poſt facto.

Indeed, ſir, I apprehend that ſome gentlemen have been led into a miſtake on this ſubject, by an incautious admiſſion of maxims and theories of legiſlative powers in another government; but which do not apply to our government, as inſtituted and limited by our conſtitution. There are, ſir, in every nation two kinds of legiſlative powers. The one is original and extraordinary; and may be called the power of political legiſlation. It is by an aſſociating nation employed in forming and organizing the government, in diſpoſing its powers and defining, or limiting their exerciſe. The other is derivative, the ordinary power of legiſlation, and is employed in the civil regulations of the community. In the firſt conſiſts the political ſovereignty of the nation. This power is tranſcendant. It is paramount to all other powers in the nation. It can create powers, rights and duties, and can aboliſh them at pleaſure; not becauſe what it does, is

always wiſe or even juſt; but becauſe no other power in the nation can have a right, or can be equal to control its operations. In Great-Britain, from ancient uſage, the conſent of the nation witneſſed by long and general acquieſcence, both the ordinary and the extraordinary powers of legiſlation are conſidered to be veſted in the parliament of the nation—acting in this capacity of political ſovereign of the nation, the Britiſh parliament can create rights, and can deſtroy exiſting rights at will; although in exerciſing ſuch acts of power, they proceed with great caution, and are careful to indemnify individuals whoſe rights they may have injured. In this capacity, it can, as it has done, new model the government. It can fix and alter the duration of parliaments, and change and limit the deſcent of the crown. Indeed veſted with this power, in addition to the ordinary powers of legiſlation, the figure is hardly too bold, by which, when acting on ſubjects within the reach of its authority, it is ſaid to be omnipotent. Not ſo the Congreſs of the United States, they poſſeſs not that tranſcendant power, that uncontrolable ſovereignty of the nation; they poſſeſs the ordinary powers only of legiſlation; and theſe powers they derive under the conſtitution of the United States: by this inſtrument their powers are inſtituted, limited and defined. This inſtrument is the act of the political ſovereign, the people of the United States. To them it was propoſed, and they through their agents impowered

for that purpoſe, enacted it the fundamental and ſupreme law of the national government. They have ſaid, as they had a right to ſay, on this ſubject Congreſs ſhall act: or that they may act at their diſcretion; here the congreſſional power is limited, there is placed a barrier which ſhall not be paſſed. Congreſs, as I obſerved, poſſeſs not this paramount power; but in one mode, provided for altering and amending the conſtitution, they are under certain reſtrictions, permitted an inceptive power. They have a right to originate propoſals of amendments, which, when ratified by three-fourths of the ſtate legiſlatures, to which the national ſovereignty is in this inſtance referred, are adopted into and become a part of that inſtrument; in another mode the ſtate legiſlatures have the power of inception. They alſo may originate propoſals of amendments, which Congreſs muſt refer to a convention of the people for their ultimate acceptance and ratification. In this inſtance alone have the people of this country reſerved to themſelves a portion of the national ſovereignty, in the exerciſe of which only is found that voice of the people, which, becauſe it is not to be reſiſted, is ſometimes called the voice of God. This, ſir, is the authority of that ſupreme law under which we act, the conſtitution of the United States; an authority indiſpenſably binding. We have no right, when we wiſh to carry a favourite meaſure, to which we find ſome barrier oppoſed by the conſtitution, to proſtrate or overleap that bar,

rier. We have no right to say that the national sovereign, could it now be consulted, would dispense with the limitation, would remove the barrier, which, in our present opinion, stands opposed to the public good. No, sir, we may not approach this ground. It is dangerous; it is an usurpation of the national sovereignty. We are but agents of the nation acting under a limited authority. All our acts which exceed that authority are void.

These are the principles to be applied in the investigation of constitutional powers. Let us then examine the constitution upon these principles, and fairly determine whether we are permitted the power for which it has been contended, the constitutional power to remove a judge, by abolishing the office, and consequently to deprive him of his salary? The first provision which we find in the constitution relating to the judicial department is in the second section, where among other powers enumerated, it is declared that Congress shall have power "to establish tribunals inferior to the supreme court." Upon this it was observed by the honourable gentleman from Georgia (Mr. J.) that this being a grant to Congress of a legislative power to establish inferior courts, necessarily includes the incidental power to repeal; that this being a first grant, cannot be restrained nor taken away by any subsequent provision in the constitution upon the same subject; that we are to take the rule of construction, that the first grant, and the first words

of the grantor in a deed, ſhall prevail over a ſubſequent grant, or ſubſequent words of a different import. Are we, indeed, ſir, to apply in the conſtruction of the conſtitution, the law, the ſupreme law of the nation, the rules deviſed for the conſtruction of a deed, a grant, by which a few paltry acres are transferred from one individual to another? No, ſir, very different are the rules of conſtruction; the firſt act of the grantor, but the laſt act of the legiſlature, ſhall prevail; or where, in any caſe, is the power to repeal? Another rule more univerſally applicable is, that you ſhall ſo conſtrue a law that every part of it, if poſſible, may ſtand together, that every part may have its operation. Thus if there be a general proviſion in the former part of a law, and there follow a particular proviſion, which cannot take effect unleſs ſome part of the former proviſion be ſet aſide, the latter ſhall be conſidered as a limitation of the former, and which ſhall be carried into effect ſo far only as it is not incompatible with the latter.

In the third ſection of the conſtitution is a further proviſion, "That the judicial power of the United States ſhall be veſted in one ſupreme court, and in ſuch inferior courts, as the Congreſs may from time to time ordain and appoint." The higheſt judicial authority ſhall not be divided into two courts. It ſhall, to uſe a ruder phraſe, be one and indiviſible. I conſider it as imperative to Congreſs to eſtabliſh not only a ſupreme court, but alſo

to eſtabliſh ſome courts of inferior juriſdiction, which may be modified and extended from time to time as experience and future expedience ſhall dictate, ſo that it be without violence to any part of the conſtitution. The words, "as Congreſs may from time to time ordain and appoint," were introduced with intent ſo far to give a diſcretion on the ſubject. The power of erecting courts, is here taken for granted, and is contained in the clauſe before cited, from the 2d ſection, ſupplied by the general clauſe by which it is declared, that "Congreſs ſhall have power to make all laws which ſhall be neceſſary and proper, for carrying into effect all the powers veſted by the conſtitution in the government of the United States, or in any officer or department of the government." I cannot underſtand it; for how is it poſſible ſo to underſtand it, that the words "may ordain and appoint," in their connexion, imply alſo a power to aboliſh? Certainly it is not a neceſſary implication. That Congreſs are required to make a proviſion of inferior courts, that the thing is not merely optional, is very clear from another part of this ſection, declaring to what claſs the judicial authority of the United States ſhall be extended. (Read that part of the ſection.) Here obſerve, the ſupreme court has original juriſdiction in the ſmaller number only of the caſes ſpecified; ſo that without a proviſion of inferior courts, there would be no proviſion for the greater number, and the judicial authority, inſtead

of being extended to all the caſes enumerated, would in fact be limited to a few only. Let us now examine the proviſion relating to the judges, which is contained in the former part of this ſection; a proviſion intended to ſecure to the judges a proper degree of independence. It is declared, that "The judges both of the ſupreme court and inferior courts, ſhall hold their offices during good behaviour." The judges of all the courts are placed on the ſame footing. The expreſſion is not that they ſhall continue in office, which might ſeem to be compulſory, but ſhall hold their offices, implying at their option, during good behaviour. For a judge may reſign, he may accept a place incompatible with the office of judge, as he may on election accept the place of ſenator or repreſentative in Congreſs, by which his office of judge would be vacated by his own act, implying a reſignation. The force of the expreſſion clearly is, that no judge either of the ſupreme or inferior courts, ſo long as he continues to behave well, can be removed from the office, or the office removed from him, by the act of any other. For the expreſſion being general, with one only exception, in the nature of a proviſo, that he continues to behave well, it is excluſive of every power either to remove the judge from the office, or, as has been ingeniouſly indeed ſuggeſted, of recovering the office from the judge, cauſing it to vaniſh from his hold on any other ground or pretence whatever. It is a well known rule, that

the expreſſion of an exception in any proviſion, excludes every other exception by implication. Next it follows, "and ſhall, (the judges ſhall,) at ſtated times, receive for their ſervices a compenſation, which ſhall not be diminiſhed during their continuance in office." How long ſhall they continue to receive, or be entitled to receive, an undiminiſhed compenſation or ſalary? So long as they ſhall continue to hold their reſpective offices. And how long are they entitled to hold their offices? So long as they ſhall continue to behave well. That is, the duration of the time for which they ſhall be entitled to receive an undiminiſhed ſalary, ſhall be equal to the duration of the time for which they are entitled to hold their offices, equal to the duration of the time in which they ſhall continue to behave well. What rarely happens in ſubjects of this nature, the poſition, that the judges cannot during good behaviour, without a direct violation of the conſtitution, be deprived of holding their offices, or of receiving their ſalaries, is capable of the higheſt proof, not merely by a train of probable and metaphyſical reaſoning, but by the cleareſt and plaineſt mathematical demonſtration. It is a compariſon of quantities in the duration of time; or ſhall it now, for the firſt time, be ſaid, that when one quantity or one length of duration is equal to a ſecond, and the ſecond to a third, that nevertheleſs they are not equal each to the other? Have intuitive truths at length changed their nature? Are they in theſe

times inverted to falſehoods? Have the cleareſt axioms of ancient ſcience ſuffered a revolutionary ſubverſion? No, ſir, they remain the ſame; they are ſtill capable of affiſting us to the ſame infallible concluſions.

The honourable gentleman from Kentucky has told us, that if the conſtruction againſt which he contended, had been contemplated by the framers of the conſtitution, it would have been explicitly declared, that the judges ſhall hold their offices and ſalaries during good behaviour, fairly admitting, that a declaration thus explicit, would have been concluſive, for the conſtruction of his opponent. Surely, it will not be contended, that the idiom of the Engliſh language is ſo inflexible, and its interpretation ſo preciſe, that identical poſitions to be equally clear and explicit, can be expreſſed by identical words and phraſes only. Had the expreſſion been, they ſhould hold their offices and receive their ſalaries during good behaviour, would not the meaning have been the ſame and equally expreſſive? Indeed the word hold, though well applied to an office, is not very properly applied to taking the payment of a ſalary. Or had it been, "they ſhall hold their offices during good behaviour, and while they continue in office, which is to be during good behaviour, they ſhall continue to receive their ſalaries, which ſhall not, during that time, be diminiſhed," it certainly would have been a declaration equally explicit with that ſuggeſted by the gentle-

man. And this, it has been clearly and demonſtrably proved, is the ſame as that which is expreſſed in the conſtitution.

I will here, ſir, though it might perhaps have been more properly done before, make a few obſervations on the independence of the judiciary. It has been ſaid by ſome gentlemen, in effect, that though the judges ought to be independent of the executive, though they ought not to hold their offices or ſalaries dependent on the will of the Preſident, yet, in a government like ours, there can be no reaſon why they ſhould not, like the other departments of the government, be dependent on public opinion, and on Congreſs, as properly repreſenting that opinion. That if the judges are made thus independent, if Congreſs cannot remove them, by aboliſhing their offices, or in any other way, except that of impeachment for miſbehaviour, they will become a dangerous body *in the ſtate*; they may, by their diſcuſſions on the conſtitutionality of a law obſtruct the moſt important meaſures of government for the public good.

Unfortunately for the argument, this doctrine agrees neither with the nature of our government, which is not veſted with the unlimited national ſovereignty, but from that derives its powers, nor with the poſitive and ſolemn declaration of the conſtitution. That conſtitution is a ſyſtem of powers, limitations and checks. The legiſlative power is there limited, with even more guarded caution than

the executive; becauſe not capable of a check by impeachment, and becauſe it was apprehended, that left unlimited and uncontrolled, it might be extended to dangerous encroachments on the remaining ſtate powers. But to what purpoſe are the powers of Congreſs limited by that inſtrument? To what purpoſe is it declared to be the ſupreme law of the land, and as ſuch, binding on the courts of the United States, and of the ſeveral ſtates, if it may not be applied to the derivative laws to teſt their conſtitutionality? Shall it be only called in to inforce obedience to the laws of Congreſs, in oppoſition to the acts of the ſeveral ſtates, and even to their rightful powers! Such cannot have been the intention. But, ſir, it will be in vain long to expect from the judges, the firmneſs and integrity to oppoſe a conſtitutional deciſion to a law, either of the national legiſlature, or to a law of any of the powerful ſtates, unleſs it ſhould interfere with a law of Congreſs; if ſuch a deciſion is to be made at the riſk of office and ſalary, of public character, and the means of ſubſiſtence. And ſuch will be the ſituation of your judges, if Congreſs can, by law, or in any other way, except by way of impeachment, deprive them of their offices and ſalaries on any pretence whatever. For it will be remembered, that the legiſlative powers of the ſeveral ſtates, as well as thoſe of Congreſs, are limited by the conſtitution. For inſtance, they are prohibited, as well as Congreſs, to paſs any bill of attainder or ex poſt

facto law. The decisions of the judges upon such laws, and such decision they have already been called upon to make, may raise against them, even in Congress, the influence of the most powerful states in the Union. In such a situation of the judges, the constitutional limitation on the legislative powers, can be but a dead letter. Better would it be they were even expunged.

Thus, sir, it appears, that the independence of the judges, even of Congress in their legislative capacity, is agreeable to the nature of our government, to the whole tenor as well as the express letter of the constitution. But, sir, at this late stage of the debate I will not further enlarge; I will only add that upon these principles, and with these views of the subject, I shall give a hearty negative to the resolution on your table.

Mr. Wells, of Delaware. I know not what apology I shall make for rising at this late period of the debate, unless I find it in the importance of the subject under discussion. Coming, as I do, from one of the smaller states, all of whom, from their peculiar situation, feel perhaps more than a common interest with their sister states, in the preservation of this constitution, I could not be indifferent to the progress of the present question. To a state circumstanced like that to which I have the honour to belong, the constitution of the United States is the charter of her rights, and the palladium of her liberties. I must, therefore, be forever induced by

ſentiments of attachment as well as duty to reſiſt a meaſure calculated to ſubvert that conſtitution. Such, I believe, is the tendency of the reſolution on your table. When I ſay ſo, I do not mean to impute any unworthy motive to the gentleman who moved the reſolution; or to thoſe who have ſupported him. Aſſured I am that thoſe gentlemen regard this buſineſs in a very different light from what we do, or they would not have brought it forward. Believing that the law in queſtion is a bad one, and may be conſtitutionally repealed, it was their duty to endeavour to effect its repeal.

Permit me now, ſir, to glance in as curſory a manner as poſſible, that I may take up no more of your time than need be, at ſome of the reaſons which have been aſſigned by the friends of this reſolution. We have been told that the law propoſed to be repealed, is unneceſſarily expenſive. That it is not calculated to promote the proper objects of a judiciary, and may be conſtitutionally repealed. That the old ſyſtem, which this has ſuperſeded, was ſufficient for the due adminiſtration of juſtice, and therefore it is expedient to revive it.

It is true, ſir, that the retrenchment of expences has been recommended to us by the Preſident. It was his duty to do ſo. It is what the people had a right to expect from us, as well as him. And theſe expectations, I truſt, would not have been diſappointed, even if our attention to it had not been invited by the executive. We are placed now in a

very different ſituation from what we have been for ſeveral years. The war in Europe is over. A war, permit me to ſay, more dreadful than any we read of. It has raged like a tremendous tempeſt bearing down almoſt every thing before it. It was not to have been expected that this our nation, towering like the majeſtic oak, ſhould have eſcaped its fury, yet it has left us ſtanding; the pride of the foreſt—and the only one to which it has not done ſome cruel miſchief. But the ſtorm is paſſed by; the danger is over; and many expenſive eſtabliſhments may now be reduced which could not before have been relaxed. It may now be economy to ſave, what it would have then been ruin not to have expended. But is the judiciary of a nature to be reduced to what is called a peace eſtabliſhment. From the manner in which gentlemen have talked of the expenſe of this department, it would ſeem that the ſum to be ſaved by the meaſure now contemplated was 137,000 dollars, whereas the real amount is only about 30,000 dollars. It is true, ſir, this ſum itſelf, were it even leſs, would be too much to ſquander away. But when you conſider, that if you revive the former law, you muſt unavoidably increaſe the number of the judges of the ſupreme court, the difference of expence between the two ſyſtems will, probably, be about 12 or 15,000 dollars. And for this ſum, amounting, among the people, to leſs than one third of a cent per man, will gentlemen perſiſt in a meaſure calculated, in the

opinion of almoſt half of the members of this body to ſubvert your conſtitution? Is this the economy which our conſtituents require from us? Do they wiſh us, like raſh and greedy gameſters, to riſque their *all* upon one ſingle caſt of the die? If the gentlemen are right, we ſave about 12 or 15,000 dollars. If they are miſtaken in their opinions, we loſe our conſtitution. Is there any poſſible compariſon between the advantage and the riſque? But for argument ſake be it admitted, that the danger on either hand is equal. Let us then examine the claims of each opinion to preference:

By the former law, which it is now propoſed to repeal, there were ſix judges of the ſupreme court appointed in the United States. In each ſtate was placed one diſtrict judge. For each ſtate there was held a circuit court twice a year: this was compoſed of one or more of the judges of the ſupreme court and the diſtrict judge. The diſtrict judge in each ſtate held a court of his own four times a year. The judges of the ſupreme court, beſide holding theſe circuit courts, were twice a year to hold a ſupreme court at the ſeat of government. One objection, in my mind, to the old ſyſtem, was the duties of the inferior and ſuperior judges being blended together and not ſufficiently ſeparated. Thus the judge of the diſtrict court was called to go up and aſſociate himſelf with the judge of the ſupreme court; who was obliged to come down from the higheſt court to hold a circuit court. Your judges

were like a Proteus ; conſtantly changing their character. Each ſet of judges, in my opinion ought to have their appropriate ſphere, and ſhould never be ſuffered to move out of it. Another objection is not without its weight. The ſame judges did not always attend the ſame circuit court; and, according to the gentleman from Georgia, (Mr. BALDWIN) this change is neceſſary, in order that the judges may in turn become, all of them, acquainted with the municipal laws and cuſtoms of the different ſtates. What was the conſequence ? A judge after attending a circuit court, and hearing a learned argument was obliged ſometimes to poſtpone his determination to the next term. When that arrived, a judge of the ſupreme court attended ; but not being the ſame that attended before, a new argument became neceſſary. This, ſir, may have been delightful ſport for the gentlemen of the bar : the poor clients muſt have felt far differently. But the ſtrongeſt objection to the ſyſtem was the impoſſibility of the judges diſcharging the duty required of them. Theſe ſix judges were to attend among them eight and thirty courts in one year. Conſidering the immenſe extent of country over which theſe courts were ſpread, and making due allowances for the many cauſes which would probably always prevent two or more of the judges from attending the circuits, each judge would have to attend twelve courts in a year. If this ſyſtem is to prevail, you muſt ſelect your judges, as you inliſt your ſoldiers. Inſtead of

enquiring for lawyers of integrity and talents, you muſt look out for able bodied men; for ſuch as are beſt fitted to ſtand the fatigue of conſtant travelling, and leaſt liable to be affected by the inclemencies of weather. It is impoſſible, if gentlemen will reflect, that they can believe it expedient to revive a ſyſtem ſo liable to objections, ſo impoſſible to be executed.

Let us now for a moment examine the law which is propoſed to be repealed. It claſſes the United States into ſix circuits. In each of the ſtates compriſing a circuit, there is a circuit judge. In each circuit there is a court compoſed of the circuit judges living within that circuit. The judges of the ſupreme court hold their ſeſſions at the ſeat of government twice a year. There is an appeal from the diſtrict court of each ſtate, to the court of the circuit within which that ſtate is claſſed. From the determination of the circuit court there is a final appeal to the ſupreme court. The ſame judges are not here, as under the former law, judges of the ſuperior and inferior courts. Each has his proper ſtation. No judge will here have to act upon an appeal from his own deciſion. In the one there is order and ſymmetry; in the other nought but confuſion.

But it would ſeem in vain to reaſon upon the relative value of the two ſyſtems; for gentlemen think that they have diſcovered by arithmetical calculations that the late law was unneceſſary. They endeavour to prove that the ſuits were decreaſing in number at the time the additional judges were

appointed. The document they rely upon for this purpoſe, is a return made from the clerks of the different circuit courts; ſhewing the annual number of ſuits brought in each court ſince the year 1790. This return is not only inaccurate, but furniſhes directly the reverſe concluſions from thoſe which have been drawn from it. I ſay it is inaccurate, becauſe the return from the court of Maryland is entirely omitted, and the aggregates of the ſuits in the ſtates of Tenneſſee and Kentucky are only given. It is incorrect in another reſpect. On the returns from the ſtates of Maſſachuſetts and Virginia, it is ſtated that the *ſuits depending* are not included in thoſe columns which ſhew the number of ſuits annually inſtituted. This document, therefore, is two glaringly incorrect to be relied upon for eſtabliſhing any concluſions which ought to guide us in buſineſs of this importance. But let us take it as we find it, and ſee if the calculations of the gentleman from Kentucky (Mr. BRECKENRIDGE) are more to be relied upon than the document itſelf. The gentleman ſays that in 1799 there were 1277 ſuits inſtituted; and in 1800 there were 687 ſuits commenced; ſhewing a decreaſe "notwithſtanding," as he ſays, "all the temporary and untoward ſources of federal adjudications," of 590 ſuits. There is one circumſtance of importance to be noted in making this calculation. In the year 1799, there were 423 ſuits brought in South Carolina, which is more than one half of the whole number of ſuits brought in that ſtate for ten years together. The greater part of

theſe ſuits were brought by Whitney and company, for the infringement of a patent right which they had obtained. The largeſt number of ſuits brought in that ſtate in any one year preceding the year 1799, was 104. The gentleman from Kentucky includes theſe ſuits in that year's account 423

He includes all the criminal ſuits brought in thoſe ſtates from which the returns are made amounting to 132, and all other ſuits amounting to 722 854

Making, for ſuits brought in the year '99 the number of 1277

Then he allows for the ſuits of 1800, only 687

He omits the whole of the criminal ſuits of that year, which amounted to 102, and of other ſuits 100: making together, thus omitted 202

Making together 889

Leaving a decreaſe of ſuits, inſtead of 590, only 388

It will be obſerved, as before-mentioned, that there are included in the account of ſuits brought in the year 1799, 423 ſuits brought that year in the ſtate of South-Carolina. Theſe exceed by 319 the higheſt number of ſuits brought, in any preceding year in that ſtate. It will therefore be neceſſary to deduct theſe

out of the above number in taking a fair view of this ſubject 319

The real decreaſe, between the years 1799, and 1800 will only be 69.

But in order to place this buſineſs in a ſtill clearer point of view, I beg leave to ſubmit a calculation ſhewing the annual aggregate number of ſuits from '90 to 1800, from which I have excluded the whole of the ſuits brought in South-Carolina ſince the firſt eſtabliſhment of the courts:

| 1790 | 1791 | 1792 | 1793 | 1794 | 1795 | 1796 |
|---|---|---|---|---|---|---|
| 111 | 306 | 311 | 400 | 365 | 527 | 466 |

| 1797 | 1798 | 1799 | 1800 |
|---|---|---|---|
| 924 | 614 | 854 | 781 |

The following calculation is made in order to ſhew the number of ſuits brought, *including* thoſe of South Carolina for 1790 to 1800:

| 1790 | 1791 | 1792 | 1793 | 1794 | 1795 | 1796 |
|---|---|---|---|---|---|---|
| 111 | 313 | 333 | 446 | 385 | 614 | 490 |

| 1797 | 1798 | 1799 | 1800 |
|---|---|---|---|
| 977 | 719 | 1277 | 889 |

Thus, although it is apparent that there has been a gradual increaſe of ſuits, ſince the firſt eſtabliſhment of the judiciary, yet the gentleman from Kentucky has endeavoured to impreſs an opinion, that the ſuits have decreaſed in the proportion that 687 bears to 1277; and this, to uſe the gentleman's

language, "notwithſtanding all the temporary and untoward ſources of federal adjudication." Yet he has taken ſpecial care, in order to ſwell up the ſuits of the year 1799, to draw, from "theſe temporary and untoward ſources of federal adjudications," all the criminal ſuits of that year, and to include the 319 ſuits of Whitney and company; but obſerve when he comes to put down the ſuits of 1800 to contraſt them with the number brought in 1799, theſe "untoward ſources" are immediately dried up, for he excludes from his account all the criminal ſuits of that year, and 100 other ſuits. Pray ſir, what kind of arithmetic is this? Is this the federal arithmetic which gentlemen have talked ſo much about?

Permit me now, ſir, to ſay but a word or two upon the unconſtitutionality of this meaſure. The conſtitution has declared, that the judicial power ſhall be veſted in a ſupreme court, and in ſuch inferior courts as Congreſs may, from time to time, create. It has added, that the judges of both the inferior and ſuperior courts ſhall hold their offices during good behaviour; but may be removed on impeachment, by the Houſe of Repreſentatives and conviction by two thirds of the Senate. What words can go ſtronger to the excluſion of every dependence of that department upon the pleaſure of any other. The people have thus duly ſecured the two great objects they had in view—the independence of the judges—and their reſponſibility.

This however is a new way of getting at the judge without affecting his independence. We will not touch the judge but we will ſlip the office from under him. We will not lower his ſalary while he is in office, but we will ſo contrive it that he ſhall be diveſted of his office and ſalary at the ſame time. Thus a mere majority of each houſe, with the concurrence of the Preſident, ſhall effect, without any fault in the judge, what the people deſigned ſhould be brought about only by impeachment. But we are aſked "ſuppoſe Congreſs ſhould appoint an army of judges." I will ſuppoſe no ſuch thing. There is every ſecurity the nature of the cauſe will admit of, that they will not do it. I will ſuppoſe the abuſe of no power which is delegated by the conſtitution, except what is ſuppoſed and guarded againſt by that conſtitution. If gentlemen will ſuppoſe the abuſe of power in creating unneceſſary offices, it is equally fair to ſuppoſe the abuſe of the power which they contend for; viz. That of deſtroying the courts. I may ſuppoſe that it will be done to get rid of judges however ſalutary the ſyſtem under which they may be appointed.

I truſt, therefore, ſir, that this reſolution will not prevail, ſince it manifeſtly appears that the ſyſtem which gentlemen propoſe to deſtroy, is in itſelf preferable to that which they intend to revive; and that the expenſe between the two is inconſiderable. But how much more ought this meaſure to fail, when without any poſſible benefit from the change,

it is to deſtroy the independence of the judges, and prepare the way for the ſubverſion of our conſtitution.

Mr. Colhoun, of South Carolina. Much time, Mr. President, has been ſpent in the important debate on the reſolution before you: great ingenuity, great abilities, and much eloquence, have been diſplayed on the occaſion, by gentlemen on both ſides of the queſtion, and the ſubject preſented in almoſt every poſſible point of view. For me, therefore, at this late ſtage of the debate, to riſe, for the firſt time, in this houſe, on a ſubject of ſuch magnitude and intricacy, already ſo ably diſcuſſed, and expect to throw much light on the ſubject, or find much new ground to tread on, would be preſumptuous. But, thinking as I do, that the preſent queſtion, both in principle and in its conſequences, is of the higheſt importance to the Union; under this impreſſion, under this conviction, I ſhould be unfaithful to my own feelings, were I to give a ſilent vote on the occaſion. If I can, therefore, throw but the weight of a feather in the ſcale that I think ought to preponderate, I ſhall think myſelf juſtified in doing ſo. But, ſir, the ſubject has been ſo much exhauſted, as well as the patience of the houſe, that I ſhall endeavour to be as conciſe as poſſible, and draw into as narrow a circle as ſo extenſive a ſubject will admit, the leading features of the caſe, which, I apprehend, ſhould have moſt weight in deciding the queſtion.

First, then, I ſhall endeavour to ſhew, that the preſent reſolution, in its effect, is repugnant to the expreſs letter and ſpirit of the conſtitution. And, ſecondly, I ſhall contraſt the obvious and natural conſequences that will ariſe from agreeing to the reſolution, with thoſe that would follow, ſhould we diſagree.

On the firſt point, the moſt important, as well as the moſt proper queſtion is, have we power, under the federal conſtitution, to repeal the late act of Congreſs, ſo far as it reſpects the office and ſalary of the judges appointed under that act? If, by the letter and expreſs words of the conſtitution, we have not the power, then farther reaſoning on the ſubject would be unneceſſary, and arguments drawn from expediency or inexpediency would be uſeleſs and irrevelant to the queſtion.

I am not, ſir, diſpoſed to advocate the late judiciary ſyſtem, in all its modifications, as I think it imperfect, and not adequate to the purpoſes intended, and that it is not ſuch an arrangement of the judiciary, as ought to have been adopted. But, as it has got into exiſtence, and is in operation, and the judges appointed under the act, commiſſioned agreeably to the conſtitution, during good behaviour; the ground is now changed, and although previous to the adoption of the act, oppoſition to the inexpediency of the meaſure would have been right, would have been proper; yet now, under exiſting circumſtances, as the law has paſſed, and

the conſtitution has attached to the office of the judges appointed under it, durability of office, co-extenſive with good behaviour, to amend would be proper, but to repeal the act, at leaſt ſo far as it reſpects the judges, would be unconſtitutional; for I am of opinion, that as ſoon as their appointments were compleated, and their commiſſions during good behaviour received, that then their offices as judges were completely beyond the reach of legiſlative power; and that therefore, the preſent reſolution in its operations, ſo far as it reſpects the office of the judges, is unconſtitutional, and ought not to be agreed to.

Permit me here, ſir, to define the legal rule of explaining a deed, a law, or conſtitutional point, and then to apply the part of the conſtitution in queſtion to that rule. The rule of law is, to make ſuch an expoſition of the ſection or clauſe under conſideration, as will comport with the plain meaning when the words are taken in their common and uſual acceptation, agreeably to the Engliſh language; if the clauſe is compoſed of dubious and uncertain expreſſions, that will admit of different meanings, or if ſeveral parts of the inſtrument ſeem to contradict or be repugnant to each other, then the rule is, to make ſuch a conſtruction, if poſſible, as will be conſiſtent with reaſon, and agreeable to the intention and purview of the whole inſtrument taken together. I think I am correct on the rule of law, let us now examine the parts of the conſtitution

connected with the present subject, and apply to them the rules of law; amongst the detailed powers of the legislature, under the 8th section of the 1st article of the constitution, we find the following, to wit: "To constitute tribunals inferior to the supreme court."

If this was the only clause giving them power to establish the inferior courts, I would readily grant, that the legislature could make the law, and at pleasure repeal it, and that the judges, as to the tenure of their office under the act, would be at the will of the legislature, the existence of the law determining the office of the judge, precisely in the same manner and on the same footing, as of the secretary of state, the secretary of the treasury, and the secretary of the navy. But the subject is more fully expressed and explained under the proper head, in the 1st section of the 3d article of the constitution, where it says, "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may, from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

Here the intention of the constitution is explicit, and cannot be doubted; plainer words, and a more clear constructed sentence cannot be penned. "The

judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behaviour." We all fully and at once underſtand what is meant by good behaviour in a judge, the oath he takes, and the very nature of his office, ſhew it; to act with juſtice, integrity, ability, and honour, and to adminiſter juſtice ſpeedily and impartially, is good behaviour; if he acts contrary, it would be miſbehaviour, and the conſtitution in that caſe has given a remedy by impeachment. If the clauſe, therefore, admits a certain, clear, and conſiſtent conſtruction, and no other part of the conſtitution contains any article contradictory to it, which I contend is the caſe, the conſtruction given by the gentlemen on the other ſide, being by implication only, and that againſt the plain and expreſs words of the clauſe, will not be warranted by the principles of law; for if the conſtitution is paramount to an act of the legiſlature, then to hold an office during good behaviour, and during the pleaſure of the legiſlature, are ſynonimous terms, it muſt be ſo, or the act would be repugnant to the conſtitution. The conſtitution, on the face of it, appears to have been drawn with preciſion and correctneſs; nothing ſuperfluous, nothing difficult. Had the convention intended the conſtruction now inſiſted for by the favourers of the reſolution, to wit: That the judges of the inferior courts hold their offices, not during good behaviour, but at the will of the legiſlature; an explanatory clauſe, after the words "good be-

haviour," would have been neceſſary, and ſhould have been inſerted to this effect: "Provided always, that the judges of ſuch inferior courts ſhall hold their offices *only* during the exiſtence of the law under which they may be appointed." By the clearneſs with which every part of the conſtitution has been penned, it is right, it is fair, by analogy of reaſoning, to ſay, that as no ſuch proviſion is inſerted, no ſuch ſuppoſed conſtruction was intended, and that therefore the plain letter and ſpirit of the conſtitution muſt prevail. But, if poſſible to make the matter more clear and concluſive, I beg indulgence whilſt I ſtate three collateral arguments, which greatly ſtrengthen and inforce the conſtruction which I advocate, of that part of the conſtitution. The firſt is, that all enlightened ſtateſmen, at leaſt ſince the American revolution, with concurrent teſtimony agree, that the judiciary ought to be kept ſeparate from, and independent of, the legiſlative and executive powers; that without this check and control, there could be no true and rational liberty. Secondly, that the framers of the conſtitution, who were themſelves amongſt the beſt informed and moſt diſtinguiſhed citizens of the Union, intended to keep them diſtinct and ſeparate, as the three great diviſions and ſupporting pillars of the conſtitution; this appears from the diſtinct poſition they aſſigned each on the face of that inſtrument. And thirdly, by the latter part of the 1ſt ſection of the 3d article, the legiſlature have no

power to leſſen a judge's ſalary, even to the amount of one cent. This reſtriction muſt refer to the legiſlature, as they alone have control over the funds of the government, for the rule of law is, "that is certain, which can be rendered certain." If, therefore, this clauſe reſtrains the legiſlature from even diminiſhing the ſalary of the judge, a fortiori, it prevents the removal from the office itſelf, as the words compoſing the whole clauſe are equally plain and expreſſive. Thus then it appears, at leaſt to me, by the plain and obvious conſtruction of the words of the conſtitution, confirmed and explained by the makers of it, that all the judges have a right to hold their offices during good behaviour, and that the legiſlature, as a creature of that conſtitution, cannot by any legiſlative act, remove them. The gentlemen, who advocate the reſolution, in ſupport of the meaſure, ſay, that Virginia, Maryland, and the laſt Congreſs, afford examples of a legiſlature aboliſhing courts, and removing from office judges, who under a conſtitution held their appointments, as in the preſent caſe, during good behaviour. Let us examine the facts and ſee if they apply.

Virginia had a general court, with common law juriſdiction, which extended throughout their ſtate, a court of chancery with equitable juriſdiction, equally extenſive, and a court of admiralty; the judges of theſe three courts, conſtituted the court of appeals. About the year 1787, the legiſlature

of that ſtate found it neceſſary to eſtabliſh circuit courts, and in the law, enacted, that 'the judges of the court of appeal ſhould be the circuit court judges.' This law the judges refuſed to execute as unconſtitutional, and ſaid, 'they conſidered themſelves as forming one of three pillars on which the great fabric of government was erected, and that when this pillar was endangered a reſignation would ſubject them to the reproach of deſerting their ſtations, and betraying the ſacred intereſts of ſociety intruſted with them; that the propriety and neceſſity of the independence of judges is evident in reaſon and the nature of their office, and that this applies more forcibly to exclude a dependence on the legiſlature, a branch of whom, in caſes of impeachment, is itſelf a party. This was the opinion formed on the law, by the then judges who were ſome of the ableſt lawyers, and greateſt ſtateſmen in the Union. I believe the event was, they proteſted againſt the law as unconſtitutional, reſigned their offices, had the reſignations recorded, and afterwards were appointed circuit judges. If this ſtatement is correct, which I preſume in ſubſtance it is; can it be ſaid, that it affords an example that would juſtify, or in the ſmalleſt degree ſupport the principles of the reſolution? In the caſe of Maryland I have not had full information, therefore, cannot decide. In the caſe of Tenneſſee and Kentucky, the diſtrict courts were aboliſhed; the judges were not removable from office; but by

law continued as circuit court judges with additional duties and additional ſalary of 500 dollars each. They neither vacated their office, nor had to take a new oath or new commiſſion; therefore in this caſe, there was no violation of the conſtitution. But to ſum the buſineſs up, the caſe of Virginia, is againſt them; the caſe of Kentucky and Tenneſſee, not in point, and Maryland, ſhould it afford an example, is the only and ſolitary one. But let us now ſuppoſe for argument ſake, though the fact is otherwiſe, that half of the ſtates in the Union paſſed ſuch laws; if thoſe laws are founded on wrong and unconſtitutional ground, ſhould they be a precedent for us? Surely not. If they were found-ed in error, we ought to correct and not continue the error. Some gentlemen have ſaid, although we cannot remove the judge from the office, yet we can remove the office from the judge. To me, this is a paradox in legiſlation. Do we mean to act indirectly what we would not profeſs to do openly and directly? Are the gentlemen prepared to meet this queſtion in all its conſequences? Let me ſuppoſe they are, and ſketch a law founded on the conſequences of their repealing act, and exhibit the caſe in its real and true light. In framing a law the preamble ſhould ſtate facts, and explain the reaſons for paſſing the act. Suppoſe then, we ſhould introduce inſtead of their preſent repealing law, the following, viz. Whereas A, B, C, &c. the ſixteen federal judges appointed under the late

act of Congress; although they have been commissioned during good behaviour, and have discharged the duties of the office with integrity, ability, and honour, yet, we the legislature in Congress assembled, finding their number to be more than we judge necessary for the administration of justice to the good people of the United States; and deeming the law under which they act not the best possible system that could be adopted, and thinking also, that the public good requires, that the judges of the inferior courts should not hold their offices during good behaviour, but should hold them at the will of the legislature: Be it therefore enacted, &c. that the said sixteen federal judges shall be, and they hereby are removed and discharged from their respective offices as judges, and shall not be entitled to any compensation or salary after the passing of this act. This act and preamble would be in truth only what the repealing act in its effects intended, and will naturally produce.

Are we prepared to vote for a law in this form, with all the true reasons stated on the face of the act, and to wish that publicity should be given to it amongst our constituents, as an act that completely destroys the independence of their judges? For the removal of the judges, I may venture to assert, is the great object of the repeal; and in this consists the injury, from the legislature assuming a power without giving any reason in the act, as in the present case, to repeal at pleasure any law establish-

ing an inferior court,' and by that means diſmiſſing the judges from office. Party ſpirit, caprice, or perſonal diſlike, would be ſufficient cauſe of removal from office; the judges would know this, and perhaps ſome of them ſoon feel it. Let us ſuppoſe, and it is even ſuppoſable, that a cauſe came on before one of the dependent judges, between an influential member of Congreſs and a poor and obſcure citizen; would any perſon ſay, that the parties ſtood on equal ground, and that the ſcales of juſtice hung equal between them? It would be almoſt beyond human nature, for this dependent judge to be impartial, eſpecially, if his ſalary was the only means of ſubſiſtence, and men of great abilities and well fitted for the office, might be in that ſituation, for a wiſe man tells us, that "the race is not always to the ſwift, nor riches to men of underſtanding." So fully am I convinced, that the judges ought to be independent of the legiſlature as well as of the executive, that if there could be a doubt that they are not fully and completely ſo, the conſtitution ought to be amended for that expreſs purpoſe. Hitherto the judges have ſuppoſed themſelves independent, and the people have acquieſced under that belief, and ought, and do wiſh their judges to be independent. One or two obſervations will prove their opinion on this point. All the ſtates in the Union have in their ſeveral conſtitutions made their judges independent. The people at large in every ſtate, having ſent members to

their reſpective conventions, thoſe conventions having fixed the conditional durability of office in their judges, and the people uniformly acquieſcing under their ſyſtems, afford ſufficient evidence of the public ſentiment. Beſides, in the caſe of Mr. Chief Juſtice JAY, when appointed envoy extraordinary to the court of Great Britain; was not oppoſition to the appointment echoed from one end of the continent to the other? That the example was dangerous, it put the judges under the influence of the executive; that although the proſpect of an honorary appointment, within the gift of the Preſident, was remote, yet, it might influence and leſſen their independence. If then the people were ſo alive and quick in feeling, when the cauſes of alarm were ſo remote and contingent; what will, what muſt be their opinion, when they find out, that the judges, from being independent by holding their offices during good behaviour, are reduced to the ſervile ſituation of holding the office at the will, at the caprice, of a legiſlature? Is the public mind prepared for a ſhock of this kind? Shall the legiſlature with a ſtrong arm, and by an aſſumed power, deſtroy their independence, and thereby, their exiſtence, as one of the pillars of the conſtitution! In this ſituation of your judiciary, will the ſtreams of juſtice flow equally to the habitation of the rich and the cottage of the poor? No man who knows human nature, will anſwer in the affirmative.

Let us now for a moment examine the conſequences of giving a negative to the preſent reſolution. If the reſolution is not agreed to what are the dreadful and fatal conſequences that would follow? I anſwer, the worſt that can poſſibly happen is the annual payment of about thirty thouſand dollars, the ſalaries of all your circuit court judges, who do the whole buſineſs of theſe circuits throughout all parts of the Union. Their number will neither impede juſtice, nor injure the principle or execution of it. It is not in the controverſy, the right of the legiſlature to arrange and modify all the courts of juſtice, ſo as to make them beſt anſwer the diſtribution of juſtice with convenience to the citizens; the whole judiciary can be ſyſtematiſed and put on the beſt and moſt reſpectable footing, without violating your conſtitution. If the circuit court judges are too numerous, ſay in your reviſing law, when vacancies happen, that ſuch vacancies ſhall not be filled up, until the whole are removed, or as many of them as it may be neceſſary to remove. Thus the evil would be continually remedying itſelf, and at no very remote period would be totally removed, and that without any interference with the conſtitution.

On the other hand, ſhould the reſolution be carried; what are the evils that would reſult? Your judges in that caſe would hold their offices at the will of the legiſlature, and be their mere creatures, ſubſervient to all their whims, caprice, and party

ſpirit, would ceaſe to be a check or barrier, between them and the people, in caſes of unconſtitutional acts and abuſe of power; it would alſo produce, agreeable to the courſe of human nature, a ſervile diſpoſition, which by degrees would enervate the mind, and completely, in proceſs of time, deſtroy that manly independence and firmneſs, ſo eſſential to an upright and good judge.

If then the evils, as I have ſtated, would be greater from adopting the reſolution, than thoſe that would reſult from paſſing a negative on it; and we add to that balance, at leaſt the doubt of its being againſt the conſtitution; and that this doubt is well founded, is evident, from the nearly equally divided opinions of the members within the walls of the Senate, and by the ſentiments of thouſands throughout the United States of the ableſt ſtatesmen and beſt citizens. Let us then, on this, at leaſt precarious and doubtful ground, tread light and ſtep with caution; for to deſtroy the independence of the judges, is wounding the conſtitution in a vital part, it is removing one of the main pillars that ſupports it. If we begin to infringe the conſtitution in one inſtance, we may in another, and by ſlow and almoſt imperceptible degrees, alter all the great and leading principles of it, until at laſt, the ſubſtance would be gone, and the ſhadow only remain; for like a body of water, if one drop makes its paſſage, the whole ſtream will ſoon follow.

Mr. COLHOUN then went at ſome length into a ſtatement of the defects which he perceived in the judiciary, and of the amendments which he deemed it expedient to make; after which he moved, that a committee ſhould be appointed, to enquire whether any and what amendments were neceſſary in the judiciary ſyſtem. This was rejected by the Vice-Preſident, as being out of order; whereupon Mr. DAYTON moved that the word *repealed* in the original motion ſhould be ſtruck out, and the words *revised and amended* be inſerted. On this the Yeas and Nays were taken, and ſtood as follow:

YEAS.

| | | | |
|---|---|---|---|
| Meſſrs. | Chipman, | Meſſrs. | Morris, |
| | Colhoun, | | Olcott, |
| | Dayton, | | Sheafe, |
| | D. Foſter, | | Tracy, |
| | Hillhouſe, | | Wells, |
| | Howard, | | White.—13. |
| | J. Maſon, | | |

NAYS.

| | | | |
|---|---|---|---|
| Meſſrs. | Anderſon, | Meſſrs. | Jackſon, |
| | Baldwin, | | Logan, |
| | Breckenridge, | | S. T. Maſon, |
| | Brown, | | Nicholas, |
| | Cocke, | | Stone, |
| | Ellery, | | Sumpter, |
| | T. Foſter, | | Wright—15. |
| | Franklin, | | |

The main queſtion was carried by a ſimilar diviſion, and Meſſrs. Anderſon, Baldwin, and Breckenridge, were appointed a committee to bring in a bill.

On Friday the 22d, Mr. ANDERSON brought in the bill, which was read, and a ſecond reading ordered.

On Monday, the 25th, it was read a ſecond time, and made the order of the day for Tueſday, the 26th, when Mr. DAYTON moved, "That it ſhould be referred to a ſelect committee, with inſtructions to conſider and report the alterations which may be proper in the judiciary ſyſtem of the United States; and the proviſion to be made reſpecting the judges of the circuit courts, eſtabliſhed by the act of the 13th of February, 1801, in caſe the ſaid act ſhall be repealed." On this the Yeas and Nays were taken, and ſtood as follow:

YEAS.

| | |
|---|---|
| Meſſrs. Chipman, | Meſſrs. Ogden, |
| Dayton, | Olcott, |
| D. Foſter, | Roſs, |
| Hillhouſe, | Sheafe, |
| Howard, | Tracy, |
| J. Maſon, | Wells, and |
| Morris, | White—14. |

NAYS.

| | | | |
|---|---|---|---|
| Meſſrs. | Anderſon, | Meſſrs. | Franklin, |
| | Baldwin, | | Jackſon, |
| | Breckenridge, | | Logan, |
| | Brown, | | S. T. Maſon, |
| | Cocke, | | Nicholas, |
| | Colhoun, | | Stone, |
| | Ellery, | | Sumpter, and |
| | T. Foſter, | | Wright—16. |

On the queſtion, ſhall the bill go to a third reading, the Yeas and Nays were alſo taken, and ſtood as follow:

YEAS.

| | | | |
|---|---|---|---|
| Meſſrs. | Anderſon, | Meſſrs. | Jackſon, |
| | Baldwin, | | Logan, |
| | Breckenridge, | | S. T. Maſon, |
| | Brown, | | Nicholas, |
| | Cocke, | | Stone, |
| | Ellery, | | Sumpter, and |
| | T. Foſter, | | Wright—15. |
| | Franklin, | | |

NAYS.

| | | | |
|---|---|---|---|
| Meſſrs. | Chipman, | Meſſrs. | Ogden, |
| | Colhoun, | | Olcott, |
| | Dayton, | | Roſs, |
| | D. Foſter, | | Sheafe, |
| | Hillhouſe, | | Tracy, |
| | Howard, | | Wells, and |
| | J. Maſon, | | White—15. |
| | Morris, | | |

The Houſe being equally divided, the bill was carried to a third reading by the vote of the Vice-Preſident.

On Wedneſday the 27th January, after filling the blanks,

Mr. DAYTON ſaid, that although he had been defeated in two attempts to arreſt the progreſs, or turn the courſe of this buſineſs, he was not however ſo far diſcouraged as to be deterred from making one other. It would, he ſaid, be recollected that all which had been aſked by him and by the oppoſers of this meaſure, in the firſt inſtance, was to attempt ſome modification of the law propoſed to be repealed; but this was refuſed them. It was then propoſed that both parties ſhould unite their labours with a view to reviſe and amend the whole judiciary ſyſtem; but this alſo was denied to them. Yeſterday he had offered an amendment combining both objects; but it was negatived. He was encouraged, however, to renew it, with a little variation, even in this late ſtage of the bill, becauſe he had learned that it had not been perfectly heard and underſtood by one of the gentlemen who had voted againſt it. He took leave to remind honourable members that theſe conciliatory motions had been rejected by a majority of one, or at moſt two only, and that of courſe the Senate were almoſt equally divided.

Mr. D. concluded by ſaying, that it could not come to good, if meaſures admitted by ſome to be

bold and violent, and believed by many others to be unconſtitutional, ſhould be carried by a bare majority, and he truſted, therefore, that this propoſition would now ſucceed.

He then moved that the bill be referred to a ſelect committee, with inſtructions to conſider and report the alterations which may be proper in the judiciary ſyſtem of the United States.

Mr. COLHOUN begged to be indulged with the expreſſion of a few ideas, which he conſidered the more important as the bill was likely to be carried by a caſting vote. He had before thought, and he ſtill thought, the beſt way was to appoint a committee to prepare a ſyſtem that would accommodate the varying ideas of gentlemen. He had voted yeſterday againſt the propoſition made, under the impreſſion that proviſion was thereby to be made for the judges. This he thought quite premature, before it was known that the act would be repealed. As it was at any rate doubtful whether one half the Senate did not think the meditated repeal a violation of the conſtitution, he thought, for harmony, it was beſt to refer the bill to a ſelect committee. The ſeſſion would be two or three months longer, and if the report made by the committee ſhould not prove agreeable, there would be time enough to bring in another bill. This attempt to harmonize all parties can do no injury, while on the other hand, a ſyſtem might be framed that gentlemen may be better pleaſed with than even a repeal of the act.

Mr. NICHOLAS ſaid, he flattered himſelf the ſubject was well underſtood by the Senate. What is now the queſtion? The ſame that has been ſo often decided. Gentlemen in oppoſition have ſaid, amend, but do not repeal. He could ſay that every vote of that houſe, in every ſtage of the diſcuſſion, had ſaid repeal, and do not amend. He believed the old ſyſtem required but little amendment. It was the beſt ſuited to the intereſts of the United States, and of the ſtates. The law of the laſt ſeſſion was in fact a bar to improvement. Gentlemen ſay why not provide for theſe judges as you have provided for a judge of the ſupreme court? He would reply that the laſt operation was ſimple and eaſy of execution; but how were we in this new mode to get rid of the circuit judges without having theſe courts in one part of the Union, and not in another?

The gentleman from New-Jerſey, has ſaid, this meaſure is admitted to be bold and violent. By whom is it admitted? Not by me, or gentlemen who think with me. As to a regard to the conſtitution, there is no man here, let his boaſt of federaliſm be what it may, that can take ſtronger ground than I hold. Gentlemen profeſs a great reſpect for the conſtitution; but our principles are not to be evidenced by mere profeſſions. They are to be evidenced by the ſeries of our actions. My conduct, ſaid Mr. N. ſince the formation of the conſtitution to this day, is known by thoſe who know

me, as well as the conduct of gentlemen is known by thoſe who know them. To the people I appeal. I am not to be alarmed by the tocſin of hoſtility to the conſtitution that is ſo loudly ſounded in our ears. I hope, ſir, we ſhall have the queſtion.

The queſtion was then taken on Mr. DAYTON's motion by Yeas and Nays, as follows:

YEAS.

| | | |
|---|---|---|
| Meſſrs. | Colhoun, | Ogden, |
| | Chipman, | Olcott, |
| | Dayton, | Roſs, |
| | D. Foſter, | Sheafe, |
| | Hillhouſe, | Tracy, |
| | Howard, | Wells, and |
| | J. Maſon, | White.—15. |
| | Morris, | |

NAYS.

| | | |
|---|---|---|
| Meſſrs. | Anderſon, | Jackſon, |
| | Baldwin, | Logan, |
| | Breckenridge, | S. T. Maſon, |
| | Brown, | Nicholas, |
| | Cocke, | Stone, |
| | Ellery, | Sumpter, and |
| | Th. Foſter, | Wright.—15. |
| | Franklin, | |

There being an equal vote, the VICE-PRESIDENT declared himſelf in the affirmative, and the reference was carried.

The VICE-PRESIDENT, ſaid he felt diſpoſed to accommodate gentlemen in the expreſſion of their wiſhes, the ſincerity of which he had no reaſon to queſtion, to ameliorate the proviſions of the bill, that it might be rendered more acceptable to the Senate. He did this under the impreſſion that their object was ſincere. He ſhould, however, diſcountenance by his vote, any attempt, if any ſuch ſhould be made, that might in an indirect way, go to defeat the bill.

The bill was committed to Meſſrs. Baldwin, Colhoun, Dayton, Anderſon, and Morris.

On Monday, the 1ſt of February, Mr. BRECKENRIDGE, gave notice, that he ſhould, the next day, move to diſcharge the committee.

On Tueſday, the 2d February, Mr. Ross, preſented a memorial of the Philadelphia bar, againſt the repeal. He obſerved, that it was not his intention to embarraſs the motion of which notice had been given, by moving, in the preſent ſtage of the buſineſs, a reference of the memorial to the committee now propoſed to be diſcharged. He offered it, that the Senate, having before them information of importance, from a number of reſpectable men, belonging to both the parties which divide the country, might give due weight to the facts which they allege. The opinions expreſſed were unanimous, and ſtrongly enforced by a letter accompanying the memorial, addreſſed to his colleague and himſelf, on behalf of the bar, by Meſſrs. Dallas and

M'Kean, the one the attorney of the diſtrict, and the other the attorney-general of Pennſylvania.

Mr. BRECKENRIDGE. It will be recollected, that I yeſterday gave notice I ſhould move to-day to diſcharge the ſelect committee, to whom the judiciary bill was laſt week committed. As there are ſome gentlemen now in the Senate, who were not preſent during any part of the diſcuſſion which that ſubject met with, I deem it proper to ſay a few words as to its progreſs, and the real ſituation in which it now ſtands.

Early in January, this diſcuſſion commenced on a motion for the *unqualified repeal* of the judiciary law of the laſt ſeſſion. After many day's debate, and at the moment when the queſtion was about to be put, an attempt was made to transform it into a motion for *amendment*. This was negatived. The reſolution was paſt, a bill was brought in, and carried to the ſecond reading, when another attempt was made, by a motion to recommit it to a ſelect committee. This was alſo negatived. The bill was then ordered to a third reading, and on the queſtion for its paſſage, the ſame motion was again made for its commitment to a ſelect committee, and carried by the caſting vote of the chair. In this ſituation it now reſts.

During the whole diſcuſſion, thoſe in favour of the repeal have uniformly argued and voted againſt any thing like amendment. They over and again declared, that they would not conſent to any amend-

ments in the judiciary ſyſtem, till that law was repealed. That they conſidered its exiſtence as an inſuperable bar to all amendments, and that indeed the only great amendment they wiſhed for, *at this time*, was a repeal of that law; the obnoxious tendencies of which were, cancer-like, to be only certainly removed by cutting it out by the roots.

On the other hand, the gentlemen in oppoſition contended, that the law was enacted with great deliberation and wiſdom, that it was eſſential to the due adminiſtration of juſtice, and to the peace of the nation, that it requires no amendment, that it cannot be amended, for that even admitting the courts and judges erected by that law were uſeleſs and burthenſome, yet Congreſs have not the power to put down thoſe courts and judges, becauſe they are in under the conſtitution. We are therefore at iſſue upon the ſimple point, ſhall this law be repealed or not.

What then, I aſk, in this ſtate of things, can be expected from the labours of the committee? Can they, on the one hand, forward the views of thoſe who carried to a third reading, a bill to repeal a certain act which they conſider as fundamentally vicious, by attempting to *amend* that act? Or, on the other hand, can they forward the views of thoſe who ſay that law was the reſult of experience and wiſdom, *that it wants no amendment*, nay, that you cannot *make* any amendment, becauſe it is faſtened on the nation by the conſtitution? Can they, I ſay,

expect to reconcile two such contradictory and opposite opinions—opinions *at variance in principle*, and not in detail. They can *not*; and it is *impossible* that those gentlemen can *seriously* expect it.

This, Mr. President, is a great contest *upon a constitutional principle*. A committee *ought* not, and *can* not settle principles. On the floor of this House alone, can those principles be settled, which furnish the ground-work of legislation. Details only are proper for committees. Sir, we *will* not abandon this question of *principle*; it *shall* not be suffered to escape us, or be entangled in forms—*it must be settled*. We will have *no* modification of this bill. Gentlemen *must* on this floor meet *the plain unqualified question of repeal*. And in order that we may be enabled to do so, I now move you that the committee to whom the bill was referred, on Wednesday last, be discharged from proceeding further therein. The bill will then be ready for its passage, and the whole merits of the question open for discussion.

Mr. Dayton. I should not have risen so soon, if the honourable member from Kentucky had been more correct in the information he has given to the Senate. It must be recollected, sir, very contrary to that gentleman's statement, that neither the first, second, nor third motions made on the subject, were the same. The first motion was to revise and amend, instead of repeal, the act of last session: the second was for revising the whole judiciary system,

and, connected with it, was a propoſition to make proviſion for the judges, if they ſhould be diſmiſſed; this latter part was diſapproved of by one honourable gentleman, who afterwards voted with us, and the motion was, in conſequence, negatived: the third differed from the ſecond by the omiſſion of that clauſe, ſo as to be agreeable to that honourable member, and was conſequently agreed to, and a committee accordingly appointed. To diſcharge this committee is the object of the preſent motion, and I aſk, Mr. Preſident, whether it is uſual, whether it is proper, whether it is even decent to make ſuch uſe of a majority ſuddenly acquired by the caſual acceſſion of a ſingle member.* Where, or when has an inſtance of this ſort ever before occurred? It is abruptly propoſed to diſcharge a committee to whom was referred one of the moſt important ſubjects of legiſlation, whilſt they are actively engaged in the buſineſs committed to them, diſpoſed to perform it with all poſſible expedition, without their having aſked to be diſmiſſed. Is it poſſible that ſo extraordinary a meaſure can receive ſupport? Will there not be found among the advocates of the original reſolution, one, at leaſt, to give it a decided diſapprobation? Will not conſiderations of delicacy towards the committee, or a ſen-

* Mr. Bradley of Vermont had arrived, and he was known to be of the miniſterial party, ſo that they had a majority of one, even had Col. Howard, who was momently expected, have been in his place.

ſiment of reſpect for the majority who ordered the commitment, or at leaſt a regard for appearances, prompt honourable gentlemen to ſcout ſuch a propoſition? Ought not the honourable mover himſelf to be induced to withdraw it? Were he a man of any moderate ſhare of ambition, he might ſurely be contented with the agency he has already had in this buſineſs. He was the *author*, at leaſt the *oſtenſible author*, of the project—he was the *mover* of the reſolution—the *mouth-piece* of his party—and a member of the committee who prepared the repealing bill. Whilſt he and his coadjutors, in the holy work of deſtruction, were conſulting together upon the death-warrant of our judiciary ſyſtem, and with it, of the conſtitution, their ſolemn deliberations were not diſturbed, no attempt was made to catch at a majority for the purpoſe of diſcharging that committee, altho' there were times when a majority might have been found unfriendly to it. On the contrary, they were ſuffered to take their own time to mature and report their bill. The diſcuſſion of its merits has been too ample and too recent to be forgotten. It will be recollected that it was ſuggeſted, as our laſt hope, that ſomething further ought to be attempted, and that it was more than poſſible that ſome expedient might be propoſed, or ſome ſyſtem deviſed, which would be acceptable to a majority, and thus render a deciſion of the conſtitutional queſtion unneceſſary. It was further intimated that the act itſelf afforded ſuch a ſcaffolding

as would be uſeful to enable us to build up a more perfect ſtructure of juriſprudence; but, if we began by demoliſhing it, inſtead of deriving aid from the materials of which it was compoſed, it would become a heap of rubbiſh, and fatally obſtruct our progreſs. Theſe ſuggeſtions were ſo much liſtened to, and approved of, as to produce the appointment of a committee, with extenſive powers "to reviſe and amend the whole judiciary ſyſtem."

It was indeed very unfortunate, that the gentleman from Kentucky, the honourable mover of this propoſition, had not been choſen on that committee. I well remember the anxiety ſhewn by the friends of that honourable member on that occaſion, and his own great mortification at the diſappointment. I am very ſorry it has carried him to ſuch an exceſs, and led him to make the extravagant propoſition on your table. And yet, Mr. Preſident, one would have thought, that without this, he had already rendered himſelf ſufficiently prominent and conſpicuous. He has been the firſt and chief actor in theſe ſcenes of legiſlative tragedy, but he ſeems to think that the goodly work of deſtruction cannot go on with ſufficient certainty and rapidity, if his agency be diſpenſed with in any ſtage of the buſineſs, or his deſtroying arm be arreſted even for a moment.

I truſt ſir, that that gentleman's motion for diſcharging the committee will be rejected, and that we ſhall not find in its adoption a practical com-

ment on the conciliatory language of the Preſident, which had been ſo often echoed by gentlemen on that ſide of the houſe.

Mr. Ross. I have long had a ſeat in this houſe, and this is the firſt time I ever heard a motion made to diſcharge a committee, unleſs by a member of the committee itſelf. And what is the reaſon aſſigned? Difference of opinion on principle. With whom does this difference exiſt? Surely not with one political party in this country, as diſtinguiſhed from another, for we have juſt heard the opinions of gentlemen of high talents, and the firm adherents to the ſame politics with thoſe of the honourable gentleman from Kentucky, that the ſyſtem is ſuſceptible of amendment. Nay, that the law which he wiſhes to repeal, is, in effect, a very important amendment of the old ſyſtem. Shall we then ſay, that it is not ſuſceptible of amendment? Are gentlemen prepared to decide inſtantaneouſly, without information or reflection, againſt opinions ſo reſpectable? Surely, this is not legiſlating with the cuſtomary caution.

Are gentlemen prepared to ſay there is no middle ground? The wiſeſt men deliberate the longeſt. Why not wait till the committee report? Why not hear what they offer? If it be bad, reject it, but firſt hear. What appearance will this haſty procedure have? One day the Senate are equally divided, and by a caution and moderation

which will not ſoon be forgotten, the bill is referred Shortly afterwards before the committee can poſſibly prepare a report, although opinion is ſtrengthening on the ſide of thoſe who voted for a commitment, yet all modification, and all chance of modification, is rejected. The ſubject is to be brought forward all at once, in general terms, to a haſty deciſion. I cannot conſider this as wiſe I hope the houſe will proceed with caution. I hope they will not inconſiderately advance, by rapid ſteps, to a point that may be attended with dangerous conſequences.

Mr. BRECKENRIDGE. It is ſaid that what I have done ſhould ſatisfy a moderate man, and that my ambition ſhould be ſatiated. But what ambition can *I* feel? What proſpects of ambition lie before *me*, in propoſing the repeal of this law. Inſtead of opening proſpects of office to *me*, the effect is directly the reverſe, by deſtroying thoſe very offices which I might expect. No, ſir, my ambition on this, as I truſt it will be on all other occaſions, is to put down a ſyſtem fundamentally pernicious. I have ſtated the grounds on which I deem it ſo, and I am ready to meet the ſentiments of my country.

We are now told, that we are to ſuſpend this buſineſs for a ſhort time, to ſtop us from ſealing the death-warrant of the conſtitution. Let *me* tell gentlemen, however they may try to excite terror, ſuch expreſſions paſs by *my* ear like the idle wind,

and leave not a trace behind. Where is the precipitation they talk of? Did not this diſcuſſion begin on the 8th of January, and did not the houſe travel as ſlow as it could? Have not gentlemen acknowledged that it has been fully and deliberately diſcuſſed? I know but one ſubject which has been ſo fully diſcuſſed. What can this ſelect committee do? Have gentlemen anſwered my arguments on this point? If our opinions on the *conſtitutionality* of the bill are ſo various and *contradictory*, what can we expect from the magic of a committee? What but delay? For I am ſure gentlemen are not ſerious when they profeſs an expectation, that the report will furniſh a plan of accommodation. *The principle muſt be ſettled here.*

Mr. MORRIS. I do not mean, Mr. Preſident, to enter *now* into the merits of the queſtion. I beg leave merely to mention, that what the gentleman laſt up was pleaſed, when he firſt roſe, to ſtate *as fact*, for the information of thoſe who were not preſent in the early part of this debate, is not the fact. One half indeed of what he ſtated is true. It is true, that he and thoſe who go with him would liſten to no amendment, but have uniformly inſiſted on a direct unqualified repeal. But when he aſſerts that this ſide of the houſe have as uniformly contended that the preſent ſyſtem is perfect, and neither requires nor admits of amendment, I muſt take leave to ſay *this is not the fact.* I ſay, ſir, *it is not the fact.* On the contrary, it has been

unequivocally declared by every member who ſpoke on this ſide of the houſe, that the law may be amended. Nay, we have repeatedly called on our opponents to point out the defects, and avowed our willingneſs to join in the proper remedies.

That gentleman, ſir, tells us, we muſt come to the ſimple queſtion of repeal. "*We* (ſays he) will "have no modification of this bill, and it is impoſſi- "ble our opponents can ſeriouſly expect to recon- "cile the contradictory opinions." Is that gentleman, then, the keeper of the conſciences not only of one half of this houſe, but of the other half too? This ſir, is a degree of preſumption which ſurpaſſes any thing I ever heard of. He gets up and ſays, nothing *can* be offered which he and his friends will approve of. And then he goes on to ſay, we cannot *expect* to offer any ſuch thing. Sir, we do expect it. I believe a ſyſtem can be deviſed much better than either the old or the new one. And ſo far have I been from expreſſing any thing like an idea that the preſent ſyſtem is perfect, that I have uniformly declared the contrary, and ſo indeed have we all.

Did not an honourable member near me, from Connecticut, explicitly declare that he voted againſt the law laſt ſeſſion, believing then, and ſtill believing that it required amendment. I could go on, and cite diſtinctly every member who has ſpoken on this ſide of the houſe to the ſame effect. Nay, ſir, what was the language of the gentleman him-

ſelf the other day? Did he not ſarcaſtically tell us, that *all* our arguments amounted only to this, "*do what you please with the law*, but ſpare! Oh! "Spare our judges!" Surely this does not comport with the ſtatement he made this day, and which (I repeat it again) *is not the fact.*

Mr. BRECKENRIDGE. The gentleman laſt up, has miſunderſtood what I have ſaid, and built all his obſervations on it. I appeal to the houſe, whether I did not ſtate in ſo many words, when I made the motion to-day, that all the gentlemen in the oppoſition had during the whole courſe of the diſcuſſion, contended that the courts and judges could not be put down, and therefore, there was no poſſibility of the committee's forming any ſyſtem to meet the wiſhes of both ſides the houſe. I have not ſaid, at leaſt I did not mean to ſay, that all the gentlemen in the oppoſition were oppoſed to *any* amendment in the ſyſtem. I well remember, what fell both from the gentleman himſelf, and from the honourable member near him, from Connecticut.

Mr. S. T. MASON. I thought, ſir, my friend from Kentucky, had ſtated ground that would not have been treated ſo rudely and abruptly by the gentleman from New-York, who had ſo ſternly reproached him with preſumption. My friend ſtated truly, that the queſtion was repeal or not repeal, and *it was on this queſtion, that the houſe have ſo often decided.* As to the idea of the gentleman from Pennſylvania, that to diſcharge the committee would be indecent and im-

proper, I really don't ſee, in what light it can be ſo. Committees are the mere creatures of the houſe, even the committee of the whole, and nothing is more common than to diſcharge them. This has been often done, and yet no complaint has been ever before heard of it.

[Mr. MASON here cited an inſtance. Two members of a committee were prepared to report, the third member, on motion, obtained the diſcharge of the committee.]

Mr. ANDERSON ſaid, as he was one of the ſelect committee, he thought it his duty to ſtate to the Senate, that it appeared to him, that a majority of the committee would only agree to ſuch amendments of the ſyſtem, as might conſiſt with keeping in the preſent judges. This fact would, he conceived, enable the Senate to judge, whether there was any proſpect of a report which would prove ſatisfactory.

Mr. DAYTON conteſted the fact, and declared, that though one of the committee, he knew of no ſuch deciſion. That indeed no queſtion had been taken in the committee, excepting on the extent of the matter referred to them. It had been doubted whether, under the order of the houſe, they could conſider the ſubject of juries, and the committee had determined that they could.

Mr. ANDERSON replied, that the matter, if not brought to a formal queſtion, had been ſufficiently diſcuſſed in the committee, to diſcover the opinion of the majority.

Mr. TRACY. In my opinion, Mr. Preſident, few committees have been raiſed for more important purpoſes than that now propoſed to be diſcharged. It has been raiſed for the purpoſe of conſidering and reporting ſuch amendments as it may be expedient to make to the whole judiciary ſyſtem of the United States. They have, as yet, ſat but a ſhort time. Too ſhort, I conceive, to decide on the objects for which they were appointed, with ſufficient deliberation, and with that maturity of thought which is due to them. I aſk, ſir, what new light has been ſhed on the ſubject, ſince their appointment, to alter the courſe then marked out by a conſtitutional majority of the Senate? If it was proper to ſeek ſome plan of accommodation between the different parties then, is it not equally proper now? No new arguments have been urged. Are gentlemen determined, in no poſſible event, to change their opinions. This would be improper. Daily inſtances occur of altering our opinions. I hope they will always occur. I am ſure they will be frequent in proportion to our deſire of adopting correct opinions founded on truth. I well recollect what fell from the chair on that memorable day, that if the object of gentlemen appeared to be delay, it would not be permitted, but that it was deſirable, when the houſe was ſo nicely balanced, to give thoſe who deſired it an opportunity to deviſe a plan of accommodation. Does this paſs by the gentleman's ear like the idle wind?

If gentlemen wiſh to make their plan as unexceptionable as poſſible, they may gratify that wiſh by giving us an opportunity of improving it; and then, if our amendments are not agreeable, they can reject them.

I voted for the act of laſt ſeſſion, becauſe I thought it a good one. I ſtill think ſo: but I declare that for the good of my country, I will freely ſacrifice all my pride of opinion. I will immolate it unheſitatingly, whenever that good ſhall require it. Is not prudence, is not caution pre-eminently requiſite at this time? Does not the ſtate of parties—for parties there are—require that we ſhould heal inſtead of irritating their wounds? If in this body one party adopts a meaſure to-day, and another party obtains by accident an aſcendence to-morrow and deſtroys it, what will be thought of our proceedings? Is this the dignified mode in which the buſineſs of legiſlation ſhould be conducted? I am ſure gentlemen will not, in their hearts, ſay that it is.

Mr. Morris. I beg leave *now*, Mr. Preſident, to ſay a few words on the merits of the queſtion, which is before you. From the explanation given by the honourable member from Kentucky, I perceive that, in the hurry of elocution, he made uſe of words, to which he did not ſufficiently attend, and which conveyed ideas different from thoſe which he meant to expreſs. I ſhall take leave therefore, to ſtate the hiſtory of this buſineſs, as it ſtands vouched by your journals.

After the motion to repeal the judiciary law of the laſt ſeſſion had been made, and when the queſtion was about to be put, it was moved to ſtrike out the word "repeal" and inſert the words "reviſe and *amend.*" The names of thirteen members ſtand recorded in favour of this motion, and fifteen againſt it. At a ſubſequent period, after the bill had been brought in, a motion was made to refer it to a committee, to conſider what *alterations* it might be proper to make in the judiary ſyſtem. The names of fourteen members ſtand recorded in favour of this motion, and ſixteen againſt it. Finally, on the third reading, it was moved that the bill ſhould be referred to a ſelect committee, with inſtructions to conſider and report the *alterations* which may be proper in the judiciary ſyſtem of the United States. It appears from the record, that fifteen members voted for, and fifteen againſt this motion; which was decided by you, ſir, in favour of the commitment. Such then is *the ſtate of facts*, and ſuch the *recorded opinions* of the members who compoſe this Houſe.

The preſent motion is to diſcharge that committee; and the reaſon aſſigned is two-fold. Firſt, that the mover, and his adherents, will agree to no amendments; and ſecondly, that the Houſe *muſt* and *ſhall* decide on the principle.

Firſt, ſir, as to amendments, it has been aſſured, that none *can* be propoſed which will cure what is called *the radical defect* of the preſent ſyſtem; and

it has been roundly declared, that no amendments, *be they what they may*, will be adopted. Being one of the committee, it becomes my duty to declare, that I believe great amendments may be made. I believe alſo that a ſyſtem can be deviſed which will obtain the aſſent of a majority in this Houſe: for, I cannot believe that the honourable mover is authorized, when he aſſerts, that thoſe who act with him, will liſten to *no* amendment. That they will not forego their intention to deſtroy the law of laſt ſeſſion, although a ſyſtem ſhould be propoſed, preferable *even in their own opinion*, to that which is to be revived by the propoſed repeal. Such predetermination would imply an influence not to be preſumed—beſides, ſir, the Preſident of the United States has particularly called our attention to that part of the judiciary which relates to the formation of juries. Your committee will, I believe, be able to offer you, in that reſpect, (as well as in others) a valuable improvement. Can it be poſſible that gentlemen are determined *to ſhut out all chance of improvement?* Sir, I cannot believe this: and, notwithſtanding the honourable member's pointed aſſertion, I do not believe it *even as to himſelf.* I think better of him. I cannot admit the idea, that he would on the floor of this Houſe, in the face of his own conſcience, and in preſence of the great Creator of the Univerſe, *refuſe his aſſent to what he knows to be right.* It cannot be, that he would, by his vote, preclude his fellow-citizens from the

benefit of a valuable inſtitution, merely to gratify his pride, or indulge his caprice. Surely no member of this Senate can be ſo loſt to a ſenſe of duty. Reſpecting, as I do, the members which compoſe it, I cannot permit myſelf to believe the gentleman's aſſertion.

As little, ſir, can I acquieſce in the propriety of the ſecond reaſon aſſigned for his extreme pertinacity. The gentleman ſays, we *must* decide on the *principle*. Has he well conſidered the conſequence? *It is highly dangerous to decide on abſtract principles.* Such is the poverty of human language, and ſuch the weakneſs of human intellect, that to expreſs preciſely an abſtract propoſition, is difficult in the extreme. Men of buſineſs have been taught by experience, that however clear their conception of an abſtract idea, when they venture to expreſs it (notwithſtanding the moſt nice ſelection, and the moſt temperate uſe of terms) concluſions will frequently be drawn from their words, and juſtly too, which by no means follow from what paſſed in their minds. It is therefore a rule with conſiderate men, never, when it can be avoided, to decide on abſtract propoſitions. Is it a judge? He will determine on ſo much as may be neceſſary to carry the caſe before him, and no more. Is it a legiſlator? He will make ſuch proviſion as circumſtances require, and ſtop there. It is not wiſe in any caſe, much leſs in a caſe like this, to decide on principles. I have early called on gentlemen to conſider what they were

about. I now repeat the call. I earneſtly repeat it. This principle on which a deciſion is ſo peremptorily demanded, is of the laſt importance. I will admit for the preſent, that our opponents may be right in the opinion that they conſtitutionally poſſeſs the power which we conteſt. But I ſhall not be charged with vanity or preſumption, for ſaying that when ſo many, and ſuch reſpectable characters as thoſe who think with me, have ſo clearly and ſolemnly expreſt their conviction that the power contended for does not exiſt, it muſt be admitted that the queſtion is at leaſt doubtful. We do not on this occaſion aſk gentlemen to abandon their opinion much leſs to adopt our opinion. We only aſk them to admit that it is a caſe of doubt. And we aſk whether it be wiſe to ſtir a great conſtitutional queſtion of ſuch doubtful nature. It goes to lengths which have not been duly examined. It is dangerous in the extreme. And where is the cogent neceſſity which could alone juſtify the hazard? I am ſure gentlemen will acknowledge, that the object to be obtained is comparatively of ſmall importance. The expenſe, which was at firſt inſiſted on, they now acknowledge to be trivial. They will not pretend that juſtice is not as well adminiſtered under the preſent, as under the former ſyſtem. Nay; it is evident from the Memorial of the Philadelphia Bar, which lies on your table, that juſtice at preſent is much better adminiſtered. This memorial ſtates to you facts, to which the memorialiſts are the moſt competent wit-

neſſes. They are men of high character, and therefore credible witneſſes. They are alſo fair and unbiaſſed witneſſes. Had they been all of the ſame political complexion, I would permit gentlemen of a different ſect to withhold their confidence. They might then have ſome pretext for objecting to the teſtimony. But this is not the caſe. The moſt eminent counſel of both parties join in expreſſing to you, not opinions for thoſe you might diſregard and rely on your own, but facts; facts which are of neceſſity within their particular knowledge. And from theſe facts it is evident, that the repeal inſiſted on, will (to ſay the leaſt) be no improvement. Surely then ſir, it is not, it cannot be wiſe, under ſuch circumſtances, where nothing valuable can be gained, to force on a deciſion ſo important, of an abſtract queſtion, doubtful and dangerous.

I ſhall not notice what has paſſed in the committee, or the opinions delivered there, for it appears to me improper, and the more ſo as each member can deliver his own opinions for himſelf on this floor. On this floor, therefore, I repeat my ſerious conviction, that various improvements can be made in your judiciary ſyſtem, and that your committee, if permitted, will have the honour of propoſing to your conſideration ſeveral amendments, and among them ſome of ſuch evident utility, that your adoption cannot be doubted.

Called on therefore, to chuſe between the chance of rendering an eſſential ſervice to the American

people, and the danger of a raſh deciſion upon a high and important queſtion of conſtitutional principle, I am directed by prudence, and commanded by duty, to prefer the former. I ſhall therefore give my voice againſt diſcharging the committee.

Mr. BALDWIN ſaid, that from the ſubject as it now ſtood before the Senate, he was diſpoſed to vote for the diſcharge of the committee, and that the Senate ſhould itſelf proceed and finiſh the buſineſs. His reaſon was, that his own mind was made up to come to a deciſion on the main queſtion, which has been for a month under diſcuſſion; and he had no reaſon to believe but that this was the caſe with the other members of the Senate. He alſo thought there could not be expected a more favourable moment to come to a fair and proper deciſion. He hoped he ſhould never be in any legiſlative aſſembly in which it would not be his wiſh to have the actual majority of both branches of the legiſlature make the laws, and decide all legiſlative queſtions. It would give him great pleaſure to ſee every member of the Senate preſent on this occaſion; next to that was the pleaſure of having reaſon to believe that the deciſion will now be the ſame as if the whole number was preſent; he had no doubt but it was generally ſo underſtood; this is the higheſt evidence that can be had in any deliberative aſſembly of what is their duty, and is the only thing that can be expected to give the moſt general and permanent ſatisfaction. He thought it very far from

being a diſreſpect to the committee, or an unuſual mode of proceeding; when the Senate is not ready to proceed in a buſineſs, they either poſtpone, commit, or adjourn it; whenever, in the opinion of the majority, the cauſe for the delay is removed, whether by the labours of a committee or of an individual member, the houſe proceed in the buſineſs, diſcharge the committee of the whole, or the ſelect committee, as is ſeen in every day's practice of parliamentary aſſemblies.

In the diſcuſſion of this morning, gentlemen appeared to have in a great degree given up what they had before conſidered their ſtrong ground. viz. the ſuperior excellency of the new judiciary ſyſtem of laſt ſeſſion, now propoſed to be repealed. The argument this morning has turned on the incompetency of that ſyſtem, and the importance of keeping the committee in ſeſſion, to deviſe another new one to be compoſed out of both the former ones. He muſt beg leave to ſubmit to the candour of the gentlemen, whether, if that was at preſent the ſtate of their minds, they had not better let the old ſyſtem, which has been in operation ever ſince the beginning of this government, with which the country is well acquainted, and to which they have been ſo much accuſtomed, be continued in operation, till their minds are more ſettled, and till more time can be given to mature and perfect amendments and alterations, which it ſeems now to be propoſed to make as to juries, and other important proviſions, which ſeem now to be in contemplation. He was very unwil-

ling to diſtract the country by many propoſitions of new judiciary ſyſtems, following each other every ſeſſion of Congreſs; he thought it more clearly evident than before, that it was beſt to go on and reſtore the old ſyſtem for a year or two longer, at leaſt. As a member of the committee, he muſt declare it as his opinion, that there was very little proſpect of their deviſing a new one, during the remainder of the preſent ſeſſion, which would be ſo likely to be acceptable as the old one, eſpecially as it had never been pretended that the old one was ſo extremely vicious and intolerable, that it might not be continued a year or two longer, till experience and reflection could deviſe ſomething in which we could be more unanimous than in any thing which has as yet preſented itſelf.

Some additional obſervations were made by Mr. S. T. MASON and Mr. ROSS, tending to explain what had been previouſly advanced. Meſſrs. COCKE, WRIGHT and JACKSON, had ſpoken in the courſe of this debate. On the queſtion the Yeas and Nays were as follow:

YEAS.

| | |
|---|---|
| Meſſrs. Anderſon, | Meſſrs. Franklin, |
| Baldwin, | Jackſon, |
| Bradley, | Logan, |
| Breckenridge, | S. T. Maſon, |
| Brown, | Nicholas, |
| Cocke, | Stone, |
| Ellery, | Sumpter, and |
| T. Foſter, | Wright—16. |

NAYS.

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| Meſſrs. Chipman, | Meſſrs. Ogden, |
| Colhoun, | Olcott, |
| Dayton, | Roſs, |
| Foſter, | Sheafe, |
| Hillhouſe, | Tracy, |
| J. Maſon, | Wells, and |
| Morris, | White—14. |

On Wedneſday, the 3d of February, a motion was made by Mr. Ross, to amend the bill, ſo as to leave in exiſtence the third circuit. This motion was predicated on the memorial of the Philadelphia bar, ſhewing the utility of this court. Mr. Ross dwelt on the ſuperiority of the new ſyſtem over the old, and on the great defect in the latter, in giving the ſame judges both original and appellate juriſdiction; a thing, ſaid Mr. Ross, neither contemplated by the conſtitution, nor conſiſtent with ſound principles of juriſprudence. As the debate on this amendment did not affect but incidentally the merits of the main queſtion, it need not be detailed. The motion was rejected.

Mr. Bradley thereupon roſe. Mr. Preſident, I ſhall vote for the repeal, becauſe it ſeems to me that we have got no uſe for theſe courts. The buſineſs was decreaſing when they were appointed, and the old ſyſtem ſeems to me to be much better than the new one. The lawyers of Philadelphia like

the new one beſt, but it is for their intereſt to have a great many courts. Now, Mr. Preſident, I look upon the repeal of this law, only as one part of a great ſyſtem. This ſyſtem, recommended by our worthy Preſident, is a ſyſtem of more glory than our country ever had. This ſyſtem is to be completed by leſſening all our expenſes; by reducing our military eſtabliſhment; by diſciplining our militia; by repealing our internal taxes; and then, ſir, we ſhall ſoon pay our debts, and with a great population of free citizens, we ſhall make all the tyrants of Europe tremble on their thrones, and in the middle of their armies. None of them will dare to attack this country. This is a glorious ſyſtem. And then, Mr. Preſident, I don't ſee how this can be ſo unconſtitutional, as the gentlemen in the oppoſition pretend. The words in the conſtitution "to hold during good behaviour," have been interpreted very differently in different ſtates; ſo, I think, we can't apply to the ſtates to fix a right meaning to them words. Well, who then ſhall we apply to? It ſeems to me we ought to apply to that country where theſe words were firſt uſed. Now, ſir, in that country, an act of Parliament can put down any courts or judges, though they do hold their offices during good behaviour. I don't ſee then, ſir, why an act of Congreſs ſhould not put down courts and judges in this country. The judges will ſtill hold their offices during good behaviour, as much as they do in England.

Beſides, Mr. Preſident, I think if we interpret the conſtitution as theſe gentlemen propoſe, it will amount to a perpetuity for this expenſive ſyſtem, becauſe when a judge dies out, the Preſident is bound to fill up the place; and even if they ſhould all happen to die together, he muſt appoint ſixteen new ones; ſo I don't ſee how we are ever to get rid of this ſyſtem; 'tis an abſolute perpetuity—unleſs God ſhould be moved, as he was by the ſins of the old world, to deſtroy us all by a flood. So, ſir, I ſhall vote for the repeal.

Mr. Ross. I regret extremely, that by my abſence from the earlier part of this ſeſſion, I have loſt the intereſting information which has been offered by the able and eloquent diſcuſſion of the queſtion. When the intelligence reached me that ſuch a bill was propoſed, I loſt no time in repairing to my ſeat, that I might at leaſt diſcharge the melancholy duty of entering my ſolemn proteſt againſt a meaſure, more pernicious in its nature, and more fatal in its conſequences, than any ever propoſed in this houſe.

Having already [in the debate on Mr. Ross's motion to except the third circuit from the repealing law] ſtated my reaſons for preferring the preſent to the former organization of the circuit courts of the United States, I ſhall repeat nothing reſpecting expediency, but confine myſelf ſtrictly to an examination of our conſtitutional power to paſs the bill now under conſideration. And in doing this, I do not mean to deny the power of Congreſs to

add new judges to exiſting courts; to forbid the filling of vacancies, ſo as to leſſen the number of judges; to devolve new duties upon the courts, or take away old, but unneceſſary juriſdiction; nor will I diſpute their authority to aboliſh a particular court where it can be no longer employed for the purpoſes of its inſtitution, provided ſuch abolition be attended with regulations guarding againſt the violations of public engagements. All theſe points may be ſafely conceded, and the conceſſion will at once ſilence thoſe gentlemen, who have as erroneouſly as boldly aſſerted, that the law of the 13th February, 1801, embraces a principle and furniſhes a precedent, as broad and as pernicious as the preſent.

That law declares, that the firſt vacancy in the ſupreme court of the United States, ſhall not be filled up. This would reduce the future number of that court to five.

How does this affect the independence of the court or any member of it? Surely there is no breach of your engagement with any individual, nor can I diſcover what gentlemen intended to condemn.

The ſame law, in the 24th ſection, provides, that the diſtrict judges of Kentucky and Tenneſſee, ſhall be component members of the courts in the ſixth circuit: And it is now aſſerted that thereby the old courts are aboliſhed, the judges diveſted of their old commiſſions, and appointed by the legiſlature to fill the new offices veſted by that act.

But when the old ſyſtem is examined, we find, that the judges in thoſe ſtates had the power of holding *circuit* courts as well as diſtrict courts within their reſpective ſtates. That by the late law they ſtill remain judges of the circuit courts as before, and retain all the powers of *district judges*. That as ſome new duties have been devolved upon them, a large additional compenſation for their ſervices has been added to their original ſalaries; and that they have all their original juriſdiction, and more; they ſit in the ſame court, hold the ſame office, have the aſſiſtance of other judges; they loſe none of their independence, but gain a great increaſe of compenſation. The law of 13th of February, 1801, then diſplays the ſacred regard of the laſt Congreſs for the conſtitutional permanency of the judiciary, inſtead of furniſhing a precedent for legiſlative removal of judges from office.

By the bill on your table, the legiſlature aſſerts and exerciſes the new and dangerous power of aboliſhing *all* the circuit courts of the United States, of removing from office *all* the judges of theſe courts, erecting new courts of the ſame name, and with preciſely the ſame juriſdiction, to be held by other perſons who are deſignated in the bill, The judges are diſplaced, not becauſe you will no longer employ circuit judges: For *you appoint* and *employ* other circuit judges: The courts are, *nominally* aboliſhed, not becauſe inferior or circuit courts of the United States are uſeleſs, or the purpoſes of their inſti-

tution at an end: For other courts, of the ſame name, with the ſame powers, and for preciſely the ſame purpoſes, are enacted by this very bill. Whatever its title may be, the bill itſelf is nothing leſs than an act of the legiſlature removing from office *all* the judges of *all* the circuit courts of the United States. It is a declaration that thoſe officers hold their offices at your will and pleaſure. That by law you ſignify your preference of other men, and that theſe ſhall ſerve you no longer.

This is a direct and palpable violation of the conſtitution. After providing for the internal ſecurity of a nation, the great care of every legiſlator is directed towards the pure and prompt adminiſtration of juſtice. It is for the attainment of this great end, that government is principally inſtituted, and the people are happy, or miſerable, as the judiciary is pure, wiſe, and independent, or otherwiſe. The executive and legiſlative authority, inſtead of being in their nature paramount, are rather auxiliary and ſubſervient in promoting the free and irreſiſtable operations of the judicial power. In our national government theſe three great powers are clearly ſeparated, and depoſited in different hands. It is a government of departments, each repreſenting and exerciſing the ſovereignty for a particular purpoſe, and each prohibited from encroaching upon or exerciſing the powers of another.

By art. 3d. ſec. 1. and 2. the judicial power is veſted in a ſupreme court, and ſuch inferior courts

as Congreſs may from time to time eſtabliſh. The judges of all courts of the United States, are to hold their offices during good behaviour, and to receive a compenſation which ſhall not be diminiſhed during their continuance in office.

The proviſion for their independence both of legiſlative and executive power was wiſe and abſolutely indiſpenſable. From the conſtitution itſelf they have a tranſcendent juriſdiction, not only between citizen and citizen, but between a ſtate and citizen, between different ſtates, and between the United States and the ſeveral ſtates: It would have been prepoſterous to ſubject the courts to thoſe whoſe acts they are directed to interpret and control. The laws of Congreſs organizing the courts, define the number of judges in each court, fix their compenſations and deſignate the extent of their juriſdiction. But the tenure of office is not derived from the laws, but from the conſtitution—Congreſs cannot erect courts to be held by judges commiſſioned during the pleaſure of the executive, or of the legiſlature, or during five or ten year only; ſuch a law, and ſuch a tenure would be clearly unconſtitutional.

But it is contended that although the conſtitution prohibits the executive and legiſlature from diſplacing a judge *directly or by name*; yet the legiſlature may aboliſh the office, and thereby indirectly effect the ſame end. For then there will be no *office* in which the judge can continue, nor any ſer-

vice rendered for what he ought to receive a *compensation*. There is no violation then of the letter of the conſtitution, and the legiſlature are the ſole judges of its true ſpirit.

I anſwer that no device, however ſubtle, will protect us in producing a forbidden reſult. An unlawful end cannot be reached by lawful means. This is a moral and logical truth of the old ſchool, which I believe the new philoſophy will find no proceſs of reaſoning to overturn; and I ſhould be obliged to any ingenious gentleman, for ſtating a ſyllogiſm which would produce ſuch a concluſion. I know well, that by metaphyſical abſtractions, you may imperceptibly gain a little and a little more, until at laſt the illuſion of the fallacy is ſcarcely within the compaſs of detection; but here, where every ſtep can be ſo diſtinctly traced, the deluſion is impoſſible. You admit that the diſmiſſion of ſixteen judges by name, would be unconſtitutional. What difference is there between this and your bill, which declares, that the circuit courts ſhall no longer be held by the preſent judges, but by certain other men? You do not deſtroy the office of circuit judge, for you ſtill retain the circuit courts. You remove the office from one ſet of men who now hold it, and give it to another ſet that pleaſes you better. Then you contend that this operation, being a removal of offices from men, is not a removal of men from office, as if your purpoſe were not as effectually attained by inverting the order of the words

as without it, you ſay there ſhall be a removal, and yet admit that direct removal by you is unlawful. Surely ſo barefaced an evaſion, ſo undiſguiſed an uſurpation of power can deceive no man who is not already reſolved to be deceived.

The honourable gentleman from Vermont has ſaid in this debate, that the words, 'holding during good behaviour,' uſed in the conſtitution, have been very differently underſtood in the different ſtates; and that the Engliſh courts, whoſe judges hold their office during good behaviour, may be aboliſhed by an act of parliament, which is held to be omnipotent.

The gentleman ought to recollect that there is no analogy in this reſpect, between our national government and that of Great-Britain. There, an act of parliament can change the conſtitution. Here the written conſtitution eſtabliſhed by the people reſtrains the legiſlature to the exerciſe of delegated power, and fixes immutably certain bounds which it may not paſs. If it ſhould raſhly exceed the delegated power, our judiciary, ſworn to ſupport the conſtitution, muſt declare that the great *irrepealable ſtatute*, made by the people, ſhall reſtrain and control the unauthoriſed acts of agents who have exceeded the limits of a ſpecial authority.

I could eaſily produce opinions of high reſpectability from many of the ſtates, ſhewing that by the words 'during good behaviour,' was underſtood a complete independence of the legiſlative as well as

executive power, but at preſent I ſhall only refer to a caſe from Virginia which is directly in point, and decided by men of great eminence, whoſe talents and political opinions will not be queſtioned by gentlemen who are the friends of this bill. As the caſe and opinion are printed and in the hands of every body, I merely repeat that the judges of Virginia, Mr. Pendleton at their head, did refuſe to execute a law of that ſtate as unconſtitutional, and aſſigned their reaſons in writing among which are the following:

"The propriety and neceſſity of the independence of the judges is evident in reaſon and the nature of the office; ſince they are to decide between government and the people, as well as between contending citizens; and if they be dependent on either, corrupt influence may be apprehended, ſacrificing the innocent to popular prejudice and ſubjecting the poor to oppreſſion and perſecution by the rich. And this applies more forcibly to exclude a dependence on the legiſlature, a branch of whom in caſes of impeachment is itſelf a party."

"This principle ſuppoſed, the court are led to conſider whether the people have ſecured or departed from it in their conſtitution or form of government. In that ſolemn act they diſcover the people diſtributing the governmental powers into three great branches, legiſlative, executive, and judiciary, in order to preſerve that equipoiſe which they

judged neceſſary to ſecure their liberty; declaring that thoſe powers be kept ſeparate and diſtinct from each other, and that no perſon ſhall exerciſe at the ſame time an office in more than one of them. The independence of the two former could not be admitted, becauſe in them, a long continuance in office might be dangerous to liberty, and therefore, they provided for a change by frequent elections at ſtated periods; but in the laſt, from the influence of the principle before obſerved upon, they declared that the judges ſhould hold their offices during good behaviour. Their independence would have been rendered complete by fixing the quantum of their ſalaries."

After ſtating the vaſt increaſe of duty, without a correſpondent increaſe of ſalary, which they deemed ſuch an attack on their independence that it would be inconſiſtent with a conſcientious diſcharge of duty to paſs it over, they ſay: "For vain would be the precaution of the founders of our government to ſecure liberty, if the legiſlature, *though restrained from changing the tenure of judicial offices*, are at liberty to compel a reſignation by reducing ſalaries to a copper, or by making it part of the official duty to become hewers of wood, or drawers of water."

From which there can be no doubt, that in the opinion of the higheſt law characters in Virginia, the words 'during good behaviour,' even without a proviſion for compenſation, do ſecure to the

judges a complete independence of the legiſlature, as well as of the executive power, in the tenure of their offices; and ſhould an indirect attempt be made upon that independence, either by withholding pecuniary compenſation, or by devolving duties too burdenſome, the judges themſelves may take up the law and declare it to be void. I ſhall only add that the legiſlature of Virginia, with moderation and good ſenſe, highly honourable to themſelves, yielded to the judges and new modelled their law.

The ſame gentleman from Vermont, has alſo complained, that all our inferior courts, as well as the ſupreme court would, according to our doctrine, be *unchangeable* and *eternal*. This poſition is altogether incorrect and fanciful; for we admit that the legiſlature may add to, or diminiſh juriſdiction, may forbid vacancies to be filled, and do many other acts contended for. But we deny that they can remove officers at their pleaſure, and put others in their ſtead: that they can vacate the acts of all our criminal and civil judges, and fill them again with their own men. In one word, that they can aſſume executive power over the judiciary, and deſtroy and create in the ſame ſtatute. The judicial power is in its nature as permanent and as unchangeable by the legiſlature or executive as the conſtitution itſelf, and when it loſes theſe attributes, we loſe all ſecurity for property, for fame, and for life, we have nothing left that is worth preſervation.

Some gentlemen have ſaid in this debate, that the ſupreme court is better ſecured by the conſtitution againſt the legiſlature, than the inferior courts, and have made a grave diſtinction, between the words 'ſhall' and 'may'—I ſee no difference in the ſecurity of the judges of the reſpective courts. Try the efficacy of the new doctrine upon the ſupreme court. It is organized by law. The power which enacted, can repeal the law. We will remove the office from the judges, not the judges from the office. At preſent there are ſix judges in that court. There will be *a ſupreme court* if we repeal the law as to three. You may ſay the three eldeſt, the three youngeſt, or the three who wear wigs, ſhall hereafter hold the court. Nay, the principles of the preſent bill, would warrant you in enacting, that the preſent ſupreme court ſhall be aboliſhed; and that the ſupreme court ſhall hereafter be held by the diſtrict judges, or any given number of them. And your juſtification is the ſame. You have legiſlated reſpecting the office only, although the fact will alſo be that the office is the ſame, but the officers are all changed by the new operation of your law.

By this horrid doctrine, Congreſs erects itſelf into a complete tyranny. All the judges of your civil and criminal courts hold their offices at the will of the legiſlature. A majority of the two houſes, is in reality the national judiciary. "During good behaviour," means as long as the pre-

vailing party in Congreſs chuſe to continue one of their own laws. When parties change the judges muſt all go out. What can our citizens, what can ſtrangers expect from ſuch courts? If you paſs laws impairing the obligation of contracts, or violating our public faith, or ex poſt facto in their operation, will our courts have courage enough to obey the conſtitution and their oaths, by declaring ſuch acts void? If you infringe the rights of a ſtate, or deny the privileges ſecured to it by the conſtitution, what remedy, what hope has the ſtate? Will the judges dare to reſiſt your law, or refuſe to execute it? If they do, their doom is certain, you ſweep away *their offices* by a law, and appoint others to do their duty: or you nominally erect new courts with the ſame juriſdiction and leave the executive to hunt for more pliant men. Nay, ſhould the courts and the legiſlature be in ſeſſion at the ſame time, and in the ſame place, the whole buſineſs may, on legiſlative whim or paſſion, be taken out of the hands of the court who had began to hear it, and given to men more favourable to the claims of popular ſuitors, or the acquittal of favourite criminals. The legiſlature thus becomes a corrupt deſpotiſm, under which no wiſe man would live, and to which no freeman ought to ſubmit.

Inſtead of an auguſt and venerable tribunal, ſeated above the ſtorms and oſcillations of faction, prepared to reſcue innocence from the fangs of the oppreſſor, to ſtand in the gap as mediators between

the great officers of government, and the people, between the national confederacy and the individual ſtates, you have a tranſient artificial body, without a will or underſtanding of its own, impelled by your own machinery, and deſtitute of the celeſtial fire which ſhould animate and direct its courſe. It will be the mimickry and the mockery of juſtice. No more will you ſee in the adminiſtration of juſtice, thoſe men whoſe acquirements and talents have called them to eminence at the bar. They will never conſent to become the ſport, the tools and victims of factions contending for maſtery in the ſtate. Even mediocrity in the profeſſion, will not leave eaſe and dignified independence for a ſeat of precarious duration, and where the hazard of degradation is imminent and irretrievable. You muſt reſort to the dregs of the law, to the peſts of ſocial life, where you may find impudence without ſcience, zeal without judgment, ſelf-ſufficiency without moral principle, and we ſhall ſoon ſee executioners inſtead of judges in the ſacred ſeat of juſtice. When popular leaders ſue before ſuch courts, their adverſaries muſt be manifeſtly in the wrong, and when the ruling party accuſes, the priſoner at the bar will never be found guiltleſs. Such a ſtate of things is certainly deprecated by every honourable member of this Houſe, and yet, in my apprehenſion, this fatal meaſure, if carried through, will hurry us forward into calamity and misfortune beyond the faculties of

man to foreſee or deſcribe. Let us then ſtop while we are yet ſafe, while the boundaries of our power and our duty are yet viſible; while we have a government founded on opinion, unaided by force and ſupported by affection; a government ſecured by ſolemn covenant and compact to abſtain from the exerciſe of prohibited power. Upon our obſervance of this eaſy condition hang the hopes and the happineſs of the new world. The day we tranſgreſs we fall from our high and happy ſtate; touch not then the forbidden tree; the taſte may perhaps be ſweet, but the ſin is mortal, and from that moment our paradiſe is loſt.

Mr. Ogden. Mr. Preſident—Thoſe who may vote for the repeal of the late judiciary law, muſt be prepared to ſay, in the *firſt* place, that the *new* ſyſtem has not advantages over the *old*, which will compenſate the difference of expenſe; *and then ſecondly*—That the *judicial* branch of the government is *altogether* dependent on the *legiſlative* branch.

As I cannot, Mr. Preſident, ſubſcribe to either the one or the other of theſe propoſitions, I feel it to be a duty, which I owe to my conſtituents and myſelf, to lay before the Senate thoſe ſentiments which ſhall actuate my vote on this occaſion.

The only reaſon which I recollect to have been urged by the honourable mover of the reſolution, upon which this repealing law is predicated, was,

that there were no benefits in the new ſyſtem, ſo ſuperior to thoſe in the old ſyſtem, as would juſtify the additional expenſe. I ſhall, therefore, in the firſt place, examine and compare the principles of theſe two ſyſtems, in this view of the ſubject.

Permit me to obſerve, Mr. Preſident, that, in my apprehenſion, the duties of the judges of the ſupreme court, and the duties of judges of inferior courts, as contemplated by the conſtitution, are diſtinct duties, and that the old ſyſtem is objectionable, becauſe it aſſigns to the ſame ſet of men, theſe diſtinct, and in ſome meaſure incompatible offices.

To ſhew, that theſe offices are thus diſtinct, I beg leave to refer to the conſtitution, which in art. 1. ſec. 8, ſays, "Congreſs ſhall have power to conſtitute tribunals *inferior to the supreme court.*" Thereby plainly contemplating the one court as diſtinct from the other.

Again, art. 3, ſect. 1, provides that "the judicial power of the United States ſhall be veſted "in one *ſupreme court*, and in ſuch *inferior courts*, "as the Congreſs may, from time to time, ordain "and eſtabliſh. The judges, *both* of the *ſupreme* "and *inferior* courts, ſhall hold their offices, &c." from whence the inference is irreſiſtable, that the office of a judge of the one court was deſigned, by the conſtitution, to be diſtinct from the office of a judge of the other courts—and that this concluſion

is right, beyond all queſtion, is manifeſt from the next ſection of the ſame article, which provides, that in two of the caſes, to which the "judicial power of the United States was extended, the *ſupreme* court ſhall have *original* juriſdiction, and in all the other caſes, the ſupreme court ſhall have *appellate* juriſdiction." Now, nothing in nature can be more diſtinct than the office of the judges *to whom* an appeal is made, and the office of the judges *from whom* an appeal is made; and yet under the old ſyſtem, the functions of theſe entirely diſtinct and incompatible offices were performed by the ſame perſons, who on one day ſat as judges of an inferior court, exerciſing original juriſdiction in a cauſe—and, in a few days after, as judges of the ſupreme court, exerciſing appellate juriſdiction in the ſelf-ſame ſuit.

This ſolid objection againſt the old ſyſtem is remedied by the new.

But it has been urged, that this objection may be done away, by preventing the ſame judge who gave his opinion, while ſitting in an inferior court, from giving an opinion in the ſame cauſe, when ſitting in the ſupreme court. I anſwer, that in ſuch caſe, you muſt *always* loſe one ſixth of the benefit of this great national tribunal, and frequently much more. It may happen, that in the ſame ſuit, one judge may decide an important queſtion of juriſdiction, upon a plea in abatement at one inferior court, and another judge the merits upon a queſtion

for a non-ſuit at the next court; and a third judge upon the form of action upon a motion in arreſt of judgment at a ſucceeding court. Now, in caſes like theſe, the ſupreme court would be reduced to one half of its number, and it might be ſhewn, that the moſt important queſtions affecting the moſt important intereſts of this great community, under the conſtitution, might be finally decided, upon writ of error, by two—nay, even one judge.

Let me aſk, Mr. Preſident, are there not a ſufficient number of actors to be found, who can with ability, fill all the characters in this great national drama; or are we ſo poor, that in order to ſave a cent a man, we muſt compel one ſet of perſons to play two parts? I hope, ſir, this is not the caſe, but that the improvement, which has been made in this particular alone, will be found worthy of the additional expenſe which it creates.

But, ſir, there is another objection to the old ſyſtem, now about to be revived, which appears to my mind, to be inſurmountable. I mean the natural impoſſibility of all the functions both of judges of the ſupreme court and inferior courts, of courts of original, and courts of appellate juriſdiction, being performed by the ſix judges of the ſupreme court, either with tolerable convenience to themſelves, or to the public.

This poſition will, I think, be manifeſt, when we conſider the extent of this vaſt country, and

that the ſame ſix judges, muſt hold inferior courts of original juriſdiction, twice in each year, in each ſtate, (except Tenneſſee and Kentucky) and that all the judges muſt aſſemble twice a year in this capitol, to officiate in the ſupreme court in the exerciſe of their appellate juriſdiction, ſo that the age and agility of a poſt-boy would be more neceſſary qualifications for judges, than that appropriate maturity and gravity for which they have been ſelected. Candour muſt admit, that to revert to this old ſyſtem, would be to place upon our judges a moſt intolerable taſk and burthen.

Again, under this old ſyſtem, courts were frequently loſt; a judge ſometimes was ſick, ſometimes the rains deſcended, the floods roſe, the roads became broken up, ſo as to render it impoſſible to hold the inferior courts at the preſcribed times—by this means, ſuitors, parties, jurors, and witneſſes, were diſappointed, and thus was produced, the law's delay—which is the greateſt curſe that can attend it.

Beſides, you might ſee one judge beginning a cauſe, another and another deciding, in its intermediate progreſs, and a different one entirely making the reddition of judgment.

Theſe facts, ſir, are completely proved by the memorial from the bar of Pennſylvania, now lying on the ſecretary's table, and it has been admitted, that if the teſtimony of the majority of the bar within the United States could be obtained, that it would prove the ſame thing.

That the new ſyſtem, remedies all theſe inconveniences has not been diſputed, and now it is about to be thrown away to ſave to the community a paltry cent per man—*no, not ſo much, not a cent.*

But, ſir, it has been objected that the judges of England, ride the circuit of that kingdom, and decide many more cauſes than come before our courts.

Let me aſk, whether, becauſe twelve judges, aſſiſted by as many other men learned in the law as they may require, to hold in their ſtead courts of Niſi Prius, can in *England* accompliſh their buſineſs in an extent of 300 miles ſquare, does it follow that *in this country*, ſix judges, unaſſiſted, can perform as much buſineſs over an extent of country of 1600 miles ſquare? And yet it has been ſo argued. *Admirable logic indeed!*

It has been further objected, that the ſtate courts may be reſorted to, for that buſineſs which, by the conſtitution, has been aſſigned to the courts of the United States, whereby the additional expenſe of the late eſtabliſhment may be ſaved. What! are we ſo poor that the United States muſt thus aſk alms from the individual ſtates, by declining to continue a proper proviſion for ſuch courts as may be neceſſary for the determination of the cauſes that may ariſe under the conſtitution and laws of the United States? We might as well, upon the ſame ſaving principle, aſk the ſtate go-

vernments to perform for the United States its executive and legiſlative duties; and what will this mighty ſaving be, *the ſmallest part of a miſerable cent a piece.* Such a want of proviſion of a competent number of judges on the part of the United States, to afford prompt and convenient juſtice, in all caſes ariſing under our conſtitution and laws, is not only, in my mind, unworthy of the dignity of this country, but ſeems like a denial to our citizens of the benefit of thoſe ſtipulations, made in their favour, when that conſtitution was adopted, which brought us, and now binds us together.

It may be here worthy of remark, that if the ſtate courts are to be reſorted to, and the legiſlature ſhould take away appeals from ſuch courts to the ſupreme court, as they ſeem authoriſed to do by the ſecond ſec. of the third article, which provides that "the *appellate* juriſdiction ſhall be liable to "ſuch exceptions, and ſuch regulations as Congreſs "ſhould make;" then it will happen, that all conſtitutional queſtions between the general government and ſtate governments muſt be decided by ſtate tribunals; and every thing thrown back, as far as relates to this ſubject, to that ſtate of things which exiſted under the old confederation.

But, ſir, in my apprehenſion of this ſubject, the legiſlature were bound to have made proviſion for *a competent* number of national courts of *original*, as well as of *appellate* juriſdiction; the one to be filled by inferior, and the other by ſupreme court

judges. When this proviſion has been made, and when it is upon the full tide of ſucceſsful experiment, is it wiſe? Is it prudent? Thus ſhortly, without the teſt of experience, to throw away theſe proviſions, for the *miserable savings now contemplated?*

It has been, moreover, objected, that the buſineſs of the national courts has decreaſed, and that the ſame neceſſity for the new eſtabliſhment as formerly, does not now exiſt.

Permit me ſir, to obſerve, that while our population is encreaſing beyond all former example: while our treaties are growing in number and our ſtatute book is enlarging, it is a neceſſary conſequence that the buſineſs of our courts muſt encreaſe; and if buſineſs did not encreaſe under the old ſyſtem, it is a concluſive proof that that ſyſtem was radically wrong. I admit, that it is very difficult to make a proviſion exactly commenſurate with the public wants; but it is certainly more ſafe to have ſuch proviſion too broad than too narrow; and as the ſyſtem *must* be uniform, it muſt be ſo extenſive as to afford a ſpeedy and convenient adminiſtration of juſtice to ſuch portions of the country, as may moſt require it.

The reſult, Mr. Preſident of this compariſon, under all theſe circumſtances, clearly is, according to my judgment, that the ſyſtem has ſuch advantages over the old, as well in its greater propriety as in its perfect practicability and ſuperior convenience,

as will, by many times, outweigh that trifling additional expenſe which ought never to have been ſet up againſt it.

But ſir, the gentlemen on the other ſide of the room, appear to me, in a great meaſure to have given up this point, and ſeem ardent to ruſh, even without a neceſſity, to give ſuch a conſtruction to the conſtitution, as will render the *judiciary* entirely dependent on the *legiſlature*; this opens a great conſtitutional point, to the diſcuſſion of which I approach with trembling.

It appears to me, ſir, that the three pillars, namely, the legiſlative, executive and judicial, upon which our goverment ſtands, are entirely *independent* of each other—that the functionaries in theſe three great departments are *irresponsible* to each other, and that they equally derive their *official being and existence* immediateiy from the conſtitution itſelf, and not from any laws, which may from time to time become neceſſary to bring theſe great departments into complete operation.

I ſay, ſir, they are *independent* of each other, becauſe, there is no dependence or connection between them, created by the conſtitution—the firſt article, whereof, ſection 1 and 2, provides for the legiſlative, the manner in which they ſhall be choſen, and the term of their offices. So, article 1, ſection 2, provides in the like manner for the executive; and article 3, ſection 1, makes ſimilar proviſion for the judicial. Now, ſir, the ſages who framed this

conſtitution would not have made theſe branches thus co-equal, co-ordinate, and independent of each other, if they had intended that either one might, by a law, be rendered dependent on either of the others; they perfectly knew, that it is as natural in politics, as attraction is in phyſics, that the greater body muſt eventually draw within its vortex every leſſer one, unleſs balanced and counteracted; they therefore, inſtead of creating any dependence of any one branch upon any one of the others, which they would have done if they had ſo intended, have expreſsly provided that the executive ſhould continue in office for *four years*, ſenators for *ſix years*, repreſentatives for *two years*, and judges *during good behaviour*. How can it be ſaid that one co-ordinate branch can abridge the time of the political exiſtence of either one of the others—and who can ſhew that if the legiſlature can do this in regard to one of the other branches, why it may not do the ſame in regard to the other.

It has been obſerved, that independent judges for life, may become dangerous, by having a complete control over your laws. I anſwer that we are here, not *making* but *acting* under the conſtitution, which has created this independence, and we are bound not to impair it. But, ſir, I believe that this independence is in perfect conformity with the genius of the American people, and that it is dear to them.

Our forefathers came from a land where this independence exiſted in the then greateſt extent in the known world. They boaſted of it with pride to their children, as the higheſt birth-right of a free citizen. They complained inceſſantly that *here* it was not ſo; that their judges were not independent, and this very reaſon, in our declaration of independence, is aſſigned as one of the cauſes of our ſeparation from our mother country.

All the American conſtitutions, in conformity to this idea, have endeavoured to preſerve the ſame independence of judges, by the moſt expreſs terms, and the inſtrument now under conſideration, uſes the moſt unequivocal language that human wiſdom can dictate, to ſecure (*as far as can be secured by paper*) the independence of the judiciary. Suffer me further to obſerve, that our government is a government of checks—that the power given by the conſtitution to the legiſlature is not *general* but *ſpecial*, that it is not *omnipotent* but *limited*—and that therefore, *neceſſarily*, a check againſt it muſt ſomewhere exiſt. Suppoſe the legiſlature ſhould paſs bills of attainder, or an unconſtitutional tax, where can an oppreſſed citizen any where find protection, but in a court of juſtice, firmly denying to carry into execution an unconſtitutional law; what power elſe can protect the ſtate ſovereignties, ſhould the other branches combine againſt them? And let me aſk, where can ſuch power be more ſafely lodged, than in that branch of the government, which

holding neither the ſword nor the purſe of the nation, cannot have either the ambition or the means of ſubverting, to their own benefit, the proviſions of our conſtitution? I contend, ſir, that by our conſtitution, judges are not only *independent* but *irreſponsible*, except in the mode therein pointed out, which is by impeachment, and if liable to be put down in any other way, they will become dependent and ſervile creatures; if the propoſed law obtains, they will be put down, without impeachment, without trial, and for no reaſon whatever, except it be, *either to ſave the ſmallest part of a miserable farthing*, or *on account of the great ſin of having been appointed under the former administration*. I hope, ſir, that ſuch an unworthy reaſon, or ſuch vindictive paſſions will never operate to produce a meaſure which will ſhake and diminiſh the confidence which conſiderate men have hitherto had in that ſecurity, which they thought they poſſeſſed under this conſtitution.

The argument, moſt worthy of notice, from the other ſide of the Houſe, appears to me to be that which is founded on an idea, that the judges about to be put down, were not created by the conſtitution, as it is ſaid the judges of the ſupreme courts were, but by the legiſlature, and that, as the creature cannot be out of the reach of the creator, ſo theſe judges muſt be dependent on the legiſlature.

Firſt, I anſwer, that no ſound diſtinction can be made between the tenures by which judges of the

ſupreme and judges of the inferior courts hold their offices, according to the conſtitution, and it having been admitted in argument, that the judges of the ſupreme court are not thus liable to be put down, it follows, that judges of the inferior courts are not thus liable; but, ſir, a diſtinction has been aimed at; it has been ſaid, that the word *ſhall* has been uſed, in reference to the one, and the word *may* in reference to the other; but I believe the word *ſhall* is equally applicable to both caſes. Take the words 'the judicial power ſhall be veſted in one ſupreme court, and in ſuch inferior courts as Congreſs *may* from time to time eſtabliſh.' Can any one doubt that the word *ſhall* is not equally imperative in the caſes of both ſpecies of courts, and that the evident meaning of the conſtitution is, that Congreſs ſhall appoint as well inferior court judges, as ſupreme court judges, and that the word *may* is only introduced to take away, in regard to the inferior courts, that limitation which is made in reſpect to the ſupreme court; the language then is, there *ſhall* be *but one* ſupreme court, although there ſhall be as *many* inferior courts as Congreſs *may* eſtabliſh. But this diſtinction, in regard to the tenure by which theſe reſpective judges hold their offices, altogether vaniſhes from my mind, when I read in the conſtitution, that the judges, both of the ſupreme and inferior courts ſhall hold their offices during good behaviour? The wit of man could not have invented more explicit terms. But, it is

ſaid, that a law was neceſſary to bring into official exiſtence, the judges of inferior courts. I anſwer, a law was equally neceſſary to bring into official exiſtence, judges of the ſupreme court, and a law for the purpoſe was actually paſſed: How then can it be ſaid, the one corps is created by the conſtitution and the other by a law? The truth is, ſir, that no ſuch diſtinction exiſts as the one which has been ſet up, and if the preſent law paſſes, it will be an irreſiſtable precedent, to any future legiſlature who may be diſpoſed by a law to put down the ſupreme court judges, and no ingenuity will be able to point out any ſolid diſtinction between the two caſes.

Again, Mr. Preſident, it is evident, that the neceſſity of having made a law, in order to give official being to theſe judges, does not make them dependent on the legiſlature, or prove that they do not hold their offices under the conſtitution; becauſe if ſuch reaſoning were good, it would equally prove, that the Preſident, Vice-Preſident, Senators, and Repreſentatives, do not hold their reſpective offices under the conſtitution; but under thoſe reſpective laws which have been neceſſarily paſſed to bring them into exiſtence; ſuch as the laws for the appointment of electors, for election of Senators and Repreſentatives, and for determining the number of Repreſentatives, by fixing the ratio: Will any one pretend, that by repealing the reſpective laws under which elections have been had, and the num-

ber of Repreſentatives aſcertained, that thereby the tenure of their offices in reſpect to the time of duration, as fixed by the conſtitution, can be impaired? Permit me to mention one more caſe; by ſec. 3, of art 1ſt, it is provided, that new ſtates *may* be admitted, by Congreſs, into this Union; now laws for this are abſolutely neceſſary, ſuch laws have paſſed; but, when paſſed, will any ſay, that the *political* exiſtence of theſe new ſtates depends on the laws; no, ſir, it depends on the conſtitution, and for this reaſon a repeal of ſuch laws, after admiſſion, cannot annihilate the new ſtates or affect their independence.

The neceſſary reſult of this enquiry is, that the office of inferior judges is derived from as high a ſource, and is equally independent of the legiſlature, as that of the judges of the ſupreme court, the Preſident, Vice-Preſident, Senators, and Repreſentatives; that the official life and being of each is derived from the conſtitution, and that the legiſlature has been merely the organ made uſe of under the conſtitution, in bringing them into exiſtence.

Has our conſtitution then provided for our citizens this immenſe ſecurity of independent tribunals, and ſhall the legiſlature now render them dependent on its own will and pleaſure? *Life*, as well as property, may be at ſtake before our courts, and are they to be filled by independent judges, who are regardleſs equally of the ſmiles or frowns of men in power, or by the dependants of the party

coming in and going out of office at each alternate change? Violent times have happened in other countries; there may be ſuch times here; and if our criminal tribunals are then filled by the miſerable minions of power, who can anſwer for the conſequences; who can ſay that blood will not flow down our ſtreets in torrents?

I ſee gentlemen on the other ſide of the houſe are *ſmiling*; but I beg them to recollect that ſuch things may be brought home to ourſelves; that I am not putting an extreme caſe; *what has happened may happen*; we have ſeen in France a conſtitution univerſally adopted, and fidelity ſworn to it in the face of heaven; we have ſeen one independent branch of the government firſt trench upon and then deſtroy another independent branch; we ſaw then the criminal tribunals filled, not with independent judges, but inſtead thereof, with *monsters* and *executioners*, the vile dependants of the national legiſlature, who were themſelves, by means of theſe very tribunals, under the control of the infamous Robeſpierre; theſe cruelties were ſucceeded by another conſtitution, and another; the independence of the national legiſlature, was, *in its turn*, trenched upon by the executive, and finally, all the ſeveral branches of government ſwallowed up together by the tranſaction at St. Cloud. I beg gentlemen to remember theſe awful diſpenſations of Providence: we are informed by the ſure word of prophecy, that "the meaſure we mete unto others, ſhall be meted unto us again;

and if we ſow the wind, we ſhall reap the whirlwind."

Bear in mind, I beſeech you, that juſtice is *even-handed*, and that ſhe may return to our own lips the bitter ingredients of this ſame bitter cup. Recollect, that times have been when a legiſlature has been turned out of their hall by armed ſoldiers; nay, ſtamped out of exiſtence. Let us not, I pray, ſet an example which may hereafter *plague us*. Let us not be the firſt independent branch of the government, which ſhall attempt the independence of another co-equal and co-ordinate branch. Let us follow the maxim of wiſdom, by *reſisting beginnings*.

The gentlemen on the other ſide of the houſe have been peculiarly called the *friends* of the people; remember a friend in *need* is a friend in *deed*. Is there then not ſome one who will ſtep out from among them, to ſave this tottering branch of our government from falling! Reſt aſſured, it is *dear* to our fellow-citizens. Aſk them, and every high-minded American will anſwer at once, *ſave us from the injuſtice, the oppreſſion, and the miſeries of dependent tribunals, by preſerving to us, for ever, the entire independence of our national judges*.

Mr. WRIGHT and Mr. JACKSON ſpoke, and Mr. ANDERSON made ſome deſultory obſervations of little importance. Mr. NICHOLAS roſe with the conſtitution in his hand, intending probably to make ſome obſervations on it; but ſhortly after opening the book, and looking at it, ſat down again.

Mr. BRECKENRIDGE. Mr. President, while my honourable friend recollects himself, I beg leave to say a few words in answer to an argument which has been much pressed to-day. I did not intend to rise again on this subject, especially at so late an hour (about 5 o'clock) and I promise to detain the house but a few minutes.

I did not expect, sir, to find the doctrine of the power of the courts to *annul* the laws of Congress, as unconstitutional, so seriously insisted on. I presume I shall not be out of order in replying to it. It is said that the different departments of government are to be checks on each other, and that the courts are to check the legislature. If this be true, I would ask, where they got that power, and who checks the courts when *they* violate the constitution? Would they not, by this doctrine, have the absolute direction of the government? To whom are *they* responsible? But I deny the power which is so pretended. If it is derived from the constitution, I ask gentlemen to point out the clause which grants it. I can find no such grant. Is it not extraordinary, that if this high power was intended, it should no where appear? Is it not truly astonishing that the constitution, in its abundant care to define the powers of each department, should have omitted so important a power as that of the courts to *nullify* all the acts of Congress, which, *in their opinion*, were contrary to the constitution.

Never were ſuch high and tranſcendent powers in any government (much leſs in one like ours, compoſed of powers ſpecially giving and defined) claimed or exerciſed by *conſtruction* only. The doctrine of conſtructions not warranted by the letter of an inſtrument, is dangerous in the extreme. Let men once looſe upon conſtructions, and where will you ſtop them. Is the *ăstutia* of Engliſh judges, in diſcovering the latent meanings, of law makers meanings, not expreſſed in the letter of the laws, to be adopted here in the conſtruction of the conſtitution? Once admit the doctrine, that judges are to be indulged *in theſe astute and wire-drawn constructions*, to enlarge their own power, and control that of others, and I will join gentlemen of the oppoſition, in declaring that the conſtitution is in danger.

To make the conſtitution a practical ſyſtem, *this pretended power of the courts to annul the laws of Congreſs cannot poſſibly exist.* My idea of the ſubject, in a few words, is that the conſtitution intended a ſeparation of the powers veſted in the three great departments, *giving to each exclusive authority on the ſubjects committed to it.* That theſe departments are co-ordinate, to revolve each within the ſphere of their own orbits, without being reſponſible for their own motion, and are not to direct or control the courſe of others. That thoſe who make the laws are preſumed to have an equal attachment to, and intereſt in the conſtitution; are equally bound by oath to ſupport it, and have an equal right to give a con-

ſtruction to it. That the conſtruction of one department of the powers veſted in it, is of higher authority than the conſtruction of any other department: And that, in fact, it is competent to that department to which powers are confided *exclusively* to decide upon the proper exerciſe of thoſe powers: That therefore, the legiſlature have the *exclusive* right to interpret the conſtitution, *in what regards the law-making power*, and the judges *are bound to execute the laws they make*: For the legiſlature would have at leaſt an equal right to annul the deciſions of the courts, founded on *their* conſtruction of the conſtitution, as the courts would have to annul the acts of the legiſlature, founded on *their* conſtruction.

Although, therefore, the courts may take upon them to give deciſions which impeach the conſtitutionality of a law, and thereby, for a time, obſtruct its operations, yet, I contend, *that ſuch a law is not the leſs obligatory becauſe the organ through which it is to be executed, has refuſed its aid.* A pertinacious adherence of both departments to their opinions, would ſoon bring the queſtion to iſſue, *in whom the ſovereign power of legiſlation reſided, and whoſe conſtruction of the law-making power ſhould prevail.*

If the courts have a right to examine into, and decide upon the conſtitutionality of laws, their deciſion ought to be final and effectual. I aſk then, if gentlemen are prepared to admit, that *in caſe the courts were to declare your revenue, impoſt, and*

*appropriation laws unconstitutional, that they would thereby be blotted out of your statute book, and the operations of your government be arrested?* It is making, in my opinion, a mockery of the high powers of legiſlation. I feel humbled by the doctrine, and enter my proteſt againſt it. Let gentlemen conſider well before they inſiſt on a power in the judiciary which places the legiſlature at their feet. Let not ſo humiliating a condition be admitted under an authority of reſting *merely* on implication and conſtruction. It will invite a ſtate of things which we are not juſtified by the conſtitution in *preſuming* will happen, and which (ſhould it happen) all men of all parties muſt deplore.

Mr. MORRIS. I riſe to congratulate this houſe, and all America, that we have at length got our adverſaries upon the ground where we can fairly meet. They have now, though late, reached the point to which their arguments tended from the beginning. Here, I knew they muſt arrive, and now I aſk, if gentlemen are prepared to eſtabliſh one conſolidated government over this country. Sir, if the doctrine they advance prevail; if it be the true doctrine, there is no longer any legiſlature in America, but that of the Union.

All the arguments they have uſed in this debate went, of neceſſity, to that concluſion which is now happily avowed. The honourable member tells us the legiſlature have the *ſupreme* and *excluſive* right to interpret the conſtitution; ſo far as regards the

making of laws, which, being made, the judges are bound to execute. And he aſks, where the judges got their pretended power of deciding on the conſtitutionality of laws. If it be in the conſtitution (ſays he) let it be pointed out. I anſwer, they derived that power from authority higher than this conſtitution. They derive it from the conſtitution of man, from the nature of things, from the neceſſary progreſs of human affairs. When you have enacted a law, when proceſs thereon has been iſſued, and ſuit brought, it becomes eventually neceſſary that the judges decide on the caſe before them, and declare what the law *is*. They muſt, of courſe, determine whether that which is produced and relied on, *has indeed the binding force of law*. The deciſion of the ſupreme court *is*, and, of neceſſity, *muſt* be final. This, ſir, is the principle, and the ſource of the right for which we contend.

But it is denied, and the ſupremacy of the legiſlature inſiſted on. Mark then, I pray, the reſult. The conſtitution ſays, no bill of attainder, or ex poſt facto law ſhall be paſſed, no capitation or other direct tax ſhall be laid, unleſs in proportion to the cenſus or enumeration to be taken, no tax or duty ſhall be laid on articles exported from any ſtate, no preference ſhall be given by any regulation of commerce or revenue to the ports of one ſtate over thoſe of another. Suppoſe that notwithſtanding theſe prohibitions, a majority of the two houſes

ſhould (with the Preſident) paſs ſuch laws. Suppoſe for inſtance that a capitation tax (not warranted by the conſtitution) or a duty on exports were impoſed. The citizen refuſes to pay. But courts dependent on the will and pleaſure of the legiſlature are compelled to enforce the collection. Shall it be ſaid, that there is an appeal to the ſupreme court. Sir, that appeal is ſubject to *ſuch exceptions and regulations* as Congreſs ſhall make. Congreſs can therefore defeat the appeal, and render final the judgment of inferior tribunals ſubjected to their abſolute control. Nay, ſir, to avoid all poſſible doubt or queſtion, the honourable member laſt up, has told us in ſo many words, *that the legiſlature may decide excluſively on the conſtitution, and that the judges are bound to execute the laws which the legiſlature enact.* Examine then the ſtate to which we are brought. If this doctrine be ſuſtained (and it is the fair logical deduction from the premiſes laid down) what poſſible mode is there to avoid the concluſion that *the moment the legiſlature of the Union declare themſelves ſupreme, they become ſo.* The analogies ſo often aſſumed to the Britiſh parliament will then be complete. *The ſovereignty of America will no longer reſide in the people, but in the Congreſs, and the conſtitution is whatever they chooſe to make it.*

I ſaw the end to which thoſe arguments went, but I would not throw it out to the people. Gentlemen will however recollect, that early in this debate I prayed them to pauſe and conſider. I men-

tioned to them without this bar the reſult of their doctrine, and yeſterday I warned them to beware of deciding on abſtract propoſitions. But they inſiſted on the deciſion, and they ſtill perſiſt; let me then aſk what ſafety is left for the ſtates?

Experience under the old confederation had ſhewn that applications made by Congreſs to large communities were nugatory, and that to carry on the buſineſs of the national government, it ſhould be inveſted with a right of applying directly to individuals. But then the danger that it might ſwallow up the ſovereignty of the ſtates became evident. To provide againſt that danger, the conſtitutional doctrine was eſtabliſhed, that no power ſhould be exerciſed by Congreſs but ſuch as was expreſsly given, or neceſſarily incident, and as a farther ſecurity, proviſion was made prohibiting certain definite acts. But of what avail are ſuch ſecurities when your legiſlative authority is to be bounded only by your own diſcretion?

While I was far diſtant from my country, I felt pain at ſome things which looked like a wiſh to wind up the general government beyond its natural tone; for I knew *that if America ſhould be brought under one conſolidated government, it could not continue to be a republic.* I am attached to republican government becauſe it appears to me moſt favourable to dignity of ſentiment and character. I have had opportunities to make the compariſon. But if a conſolidated government be eſtabliſhed, it cannot long be

republican. We have not the materials to conſtruct even a mild monarchy. If, therefore, the ſtates be deſtroyed, we muſt become the ſubjects of deſpotiſm.

It may perhaps be ſaid that all judges are bound by oath to ſupport the conſtitution. But I aſk how is that to be done? Their power over your laws is denied, and when once it is eſtabliſhed that *you*, and *you alone*, are the legitimate interpreters of the conſtitution, *they* muſt be bound by *your* conſtruction.

Gentlemen may flatter themſelves that the danger from this quarter is remote or ideal. I know that ſo long as peace ſhall laſt, the ſtates will be the general favourites; becauſe they offer *numerous* objects to gratify *little* ambition, but no ſooner ſhall this country be involved in war, than all men will look up to the national government for patronage and protection. Having *then* the command of a large military force, it muſt, under the conſtruction now ſet up, become ſupreme. Remember that the old Congreſs conferred (without authority) dictatorial power over a large extent of country, and that it was exerciſed and ſubmitted to without oppoſition. Gentlemen in this Houſe repreſent the ſovereignty of the ſtates. I now call upon them. Are they ready to proſtrate that ſovereignty at the feet of the general government? I, ſir, on the part of the ſtate of New-York beg leave to enter my ſolemn proteſt.

Mr. Jackson. Mr. Preſident, the gentleman from New-York really frightened me, for there is

nothing I fear ſo much as a conſolidated government in America. I think as he does, ſir, that the moment it takes place there is an end to our liberty. But upon reflection, I think *that* gentleman has raiſed an alarm without foundation: for he ſays, ſir, that if the Congreſs ſhould paſs laws injuring the ſtates, the inferior courts would execute them, becauſe they are to be dependent upon the will of Congreſs: but, ſir, if the gentleman will look at the conſtitution, he will find it is there ſaid, in the ſecond ſection of the third article, "In all "caſes affecting ambaſſadors, other public miniſters "and conſuls, and thoſe in which a ſtate ſhall be a "party, the ſupreme court ſhall have original juriſ-"diction. In all the other caſes before mentioned, the "ſupreme court ſhall have appellate juriſdiction *both* "*as to law and fact.*" The gentleman therefore may diſmiſs his fears, as to what may be done by the inferior courts, for there is always an appeal to the ſupreme court. (Mr. JACKSON then paid ſome compliments to the preſent adminiſtration, inveighed againſt the ſedition law, and that by which the Preſident might ſend foreigners out of the country, &c. &c. he afterwards ſaid:) I have always conſidered the independence of the ſeveral ſtates as the ſafeguard of our liberties, they are the ſixteen pillars which ſupport the great arch of our empire, and I hope that nothing will ever be done to ſhake them.

Mr. DAYTON. Mr. Preſident—What has fallen from the gentleman who has juſt ſat down, reminds me of the ſtory of a man who boldly denied the exiſtence of a Deity, and undertook to prove it from the Scriptures. He opened the ſacred volume, and read therein the words, "*there is no God.*" A bye-ſtander, who was not diſpoſed to take ſuch things upon truſt, took up the book and recited the whole phraſe—"*The fool hath ſaid in his heart there is no God,*" and the poſition of this daring infidel vaniſhed into air. Upon the ſame frail foundation reſts the anſwer which has juſt been given by the laſt ſpeaker, to the irreſiſtible arguments of my honourable friend from New-York. It was ſtated by my honourable friend moſt diſtinctly, that although it might be pretended that there was an appeal from the inferior courts to the ſupreme court, yet as that appeal was ſubject to ſuch exceptions and regulations as Congreſs ſhould make it was in the power of Congreſs to defeat it altogether. The gentleman from Georgia has undertaken to prove, from the conſtitution, that my honourable friend was miſtaken: and how has he done it? He read theſe words, "In all the other caſes before mentioned, the ſupreme court ſhall have appellate juriſdiction, both as to law and fact;" here he ſtopped, and grounded his argument on the part which he had read. Had he carried his eyes to what follows in the ſame ſentence, and in the

next two lines, he would have found that the clauſe ſtands thus: "In all the other caſes before mentioned, the ſupreme court ſhall have appellate juriſdiction, both as to law and fact, *with ſuch exceptions, and under ſuch regulations as the Congreſs ſhall make,*" being preciſely what the gentleman from New-York had ſtated, and what the gentleman from Georgia had thought proper to contradict.

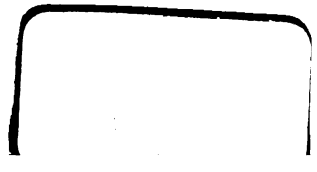
But, ſir, the object of the laſt ſpeaker was not the ſingle one of making an impreſſion by a partial quotation from the conſtitution. He ſaw the delicate, dangerous and alarming ground, upon which the member from Kentucky, who had been the prime mover of this meaſure, and the mouth-piece of his party, had placed the ſubject, and he was deſirous of diverting us who are in the oppoſition, from exhibiting thoſe newly profeſſed, (although ſecretly harboured) doctrines, in their true colours. Their deformity and dangerous tendency have, however, been ſo ably and ſtrikingly diſplayed, by the honourable gentleman from New-York, that they cannot fail to make a ſerious impreſſion on the public mind. And whatever may now be ſaid or concealed, it muſt hereafter be underſtood, that upon the ſucceſs of this meaſure, depended one of the moſt precious proviſions of our conſtitution.

The queſtion was then taken on the final paſſage of the bill:

YEAS.

| | | | |
|---|---|---|---|
| Meſſrs. | Anderſon, | Meſſrs. | Franklin, |
| | Baldwin, | | Jackſon, |
| | Bradley, | | Logan, |
| | Breckenridge, | | S. T. Maſon, |
| | Brown, | | Nicholas, |
| | Cocke, | | Stone, |
| | Ellery, | | Sumpter, and |
| | T. Foſter, | | Wright—16. |

NAYS.

| | | | |
|---|---|---|---|
| Meſſrs. | Chipman, | Meſſrs. | Ogden, |
| | Colhoun, | | Olcott, |
| | Dayton, | | Røſs, |
| | D. Foſter, | | Sheafe, |
| | Hillhouſe, | | Tracy, |
| | Howard, | | Wells, and |
| | J. Maſon, | | White—15. |
| | Morris, | | |

FINIS.